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Draft legislative guide on key principles of a business registry

Note by the Secretariat

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Introduction

1. The present legislative guide has been prepared on the understanding that, for the reasons described in document A/CN.9/WG.I/WP.110 (formerly A/CN.9/WG.I/WP.107), it is in the interests of States and of micro, small and medium-sized enterprises (MSMEs) that such businesses operate in the legally regulated economy. This guide is also intended to reflect the idea that entrepreneurs that have not yet commenced a business may be persuaded to do so in the legally regulated economy if the requirements for formally starting their business are not considered overly burdensome, and if the advantages for doing so outweigh their interest in operating in the extralegal economy.

2. This legislative guide recognizes that in several States, MSMEs, especially micro and small businesses, may not be required to register with the business registry in order to operate in the legally regulated economy, but they may be required to register with other public authorities such as taxation and social security authorities. The operation of a business in the legally regulated economy refers to a business that has complied with all mandatory registration and other requirements of the jurisdiction in which it is doing business.

3. Depending on the jurisdiction in which the business is operating and the legal form of the business, registration with the business registry may be one of the mandatory registration requirements for doing business in that jurisdiction. However, this guide recommends that even States that do not require mandatory business registration should consider permitting, but not necessarily requiring, businesses of all sizes and legal forms to register in the business registry. This permissive approach could significantly enhance the advantages for businesses operating in the legally regulated economy as set in paragraph 36 of document A/CN.9/WG.I/WP.110.[1]

4. As the Working Group may recall, it agreed[2] at its twenty-fifth session that document A/CN.9/WG.I/WP.110, should be prepared as an introductory document that, once adopted, was intended to form a part of the final text and provide an overarching framework for current and future work by UNCTRAL to assist MSMEs in overcoming the legal barriers faced by them during their life cycle. Underpinning that contextual framework would be a series of legal pillars, which would include both legislative guides currently under preparation by the Working Group — the present guide on key principles of a business registry and the other guide on an UNCITRAL limited liability organization[3] — as well as any other materials adopted by UNCITRAL in respect of MSMEs. In summary, A/CN.9/WG.I/WP.110 currently outlines the following themes as key to UNCITRAL's approach to its MSME work:

(a) The importance of MSMEs in the global economy;

(b) Each State should decide what constitutes a micro, small or medium-sized business in its own economic context, the common factor being that the smallest and most vulnerable businesses require assistance;

(c) Although MSMEs are incredibly disparate in their size, goals, the commercial sector in which they operate and their general nature, they usually face a number of common obstacles;

(d) Improving the business environment assists businesses of all sizes, not only MSMEs;

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[1] At its twenty-ninth session, the Working Group requested the Secretariat to clarify what form of registration by a business is required to operate in the "legally regulated economy" as opposed to the "extralegal economy" (para. 22, A/CN.9/928). That clarification has been made to the relevant paragraphs of this guide and of document A/CN.9/WG.I/WP.110.

[2] As agreed by the Working Group (para. 87, A/CN.9/866) and approved by the Commission (*Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (A/71/17) para. 222).

[3] See A/CN.9/WG.I/WP.99 and A/CN.9/WG.I/WP.99/Add.1.

(e) Participation by MSMEs in the legally regulated economy can assist them in successfully negotiating the obstacles they face;

(f) States should make it simple and desirable for MSMEs to participate in the legally regulated economy by:

(i) Explaining what it means and by setting out the advantages for entrepreneurs, as well as by ensuring appropriate communication of and education on those advantages and opportunities;

(ii) Making it desirable for MSMEs to conduct their activities in the legally regulated economy, for example, by offering them incentives for doing so; and

(iii) Making it easy for MSMEs to operate in the legally regulated economy by enacting laws that:

a. Facilitate creation and operation of legally recognized simple and flexible legal business forms that meet the needs of MSMEs;[4] and

b. Ensure that business registration and any mandatory registration with public authorities is accessible, simple and streamlined.

5. In order to encourage entrepreneurs to operate their business in the legally regulated economy — particularly when business registration is a requirement for them to do so — States may wish to take steps to rationalize and streamline their system of business registration. Faster and simpler procedures to register a business could be expected to assist in business formation of all sizes and types of businesses, not only MSMEs. For these reasons, simplification and streamlining of business registration has become one of the most pursued reforms by States in all regions and at all levels of development. This trend has generated several good practices, whose features are shared among the best performing economies. In order to assist States wishing to reform their business registration procedures so as to take into consideration the particular needs of MSMEs, or simply to adopt additional good practices to streamline existing procedures, this guide sets out key principles and good practices in respect of business registration, and how to achieve the necessary reforms.

6. Further to discussion in the Working Group and decisions made at its twenty-fifth (October 2015) and twenty-sixth sessions (April 2016),[5] the Secretariat prepared a consolidated draft legislative guide (A/CN.9/WG.I/WP.101), which addressed legal, technological, administrative and operational issues involved in the creation and implementation of a business registration system. The draft combined into a single text the draft commentary (A/CN.9/WG.I/WP.93, Add.1 and Add.2) and recommendations (A/CN.9/WG.I/WP.96 and Add.1) considered by the Working Group at its twenty-fifth and twenty-sixth sessions.

7. At its twenty-eighth session (May 2017), the Working Group reviewed that consolidated text (A/CN.9/WG.I/WP.101) save for the introductory section and draft recommendation 9 ("Core functions of a business registry")[6] and its attendant commentary to which the Working Group agreed[7] to revert at a future session. The changes to the text arising from the deliberations of the Working Group at that session were included in a revised draft of the legislative guide (A/CN.9/WG.I/WP.106) which was considered by the Working Group at its twenty-ninth session (October 2017) save for the introductory section and part of the Annex (paras. 1 to 6 and 8 to 16 and recs. 1 and 3/Annex). The current revision of the legislative guide includes changes arising from the deliberations of the Working Group at that session; guidance to the revisions made is reflected in footnotes throughout the text. As in

[4] See A/CN.9/WG.I/WP.99 and A/CN.9/WG.I/WP.99/Add.1.

[5] See para. 73, A/CN.9/860 and para. 51, A/CN.9/866.

[6] Recommendation 9 of A/CN.9/WG.I/WP.106 is recommendation 10 in this draft of the legislative guide.

[7] See para. 46, A/CN.9/900 and para. 82, A/CN.9/860.

A/CN.9/WG.I/WP.106, the Secretariat has also made editorial adjustments necessary to facilitate the cohesion and consistency of the text.

A. Purpose of the present guide

8. Business registries are systems established by law that receive, store and make accessible to the public certain information on new and existing businesses that are operating in the jurisdiction of the registry, both when those businesses are established and throughout the course of their lifespan. This process not only enables such businesses to comply with their obligations under the domestic law applicable to them, but it empowers them to participate fully in the legally regulated economy when registration is required for that purpose, and otherwise enables them to benefit from legal, financial and policy support services that are more readily available to registered businesses. Moreover, when information is appropriately maintained and shared by the registry, it allows the public to access business information, thus facilitating the search for potential business partners, clients or sources of finance and reducing risk when entering into business partnerships. In performing its functions, the registry can thus play a key role in the economic development of a State. In addition, since businesses, including MSMEs, are increasingly expanding their activities beyond national borders, registries efficiently performing their functions can play an important role in a cross-border context by facilitating access to business information of interested users from foreign jurisdictions (see also paras. 198 and 199 below), which greatly reduces the risks of transacting and contracting.

9. Business registration systems vary greatly across States and regions, but a common thread to all is that the obligation to register can apply to businesses of all sizes depending on the legal requirements applicable to them under domestic law. Approaches to business registration reforms are most often "neutral" in that they aim at improving the functioning of the registries without differentiating between large-scale business activities and much smaller business entities. Evidence suggests, however, that when business registries are structured and function in accordance with certain features, they are likely to facilitate the registration of MSMEs, as well as operating more efficiently for businesses of all sizes. These features are reflected as recommendations in this legislative guide.

10. This legislative guide draws on the lessons learned through the wave of reforms of business registration systems implemented since 2000 by States in various geographic regions.[8] Through this approach, the guide intends to facilitate not only efficient domestic business registration systems, but also cooperation among registries in different national jurisdictions, with a view to facilitating cross-border access to registries by all interested users. Promoting the cross-border dimension of business registration contributes to foster transparency and legal certainty in the economy and significantly reduces the cost of businesses operating beyond their national borders (see also paras. 198 and 199 and rec. 39 below).

11. The present guide supports the view that transitioning to an electronic or mixed (i.e. electronic and paper-based) registration system greatly contributes to promoting the registration of MSMEs. The guide recognizes that adoption of modern technology has not progressed equally among or within States, and it recommends that any reform towards an electronic business registration system should be tailored to the State's technological and socioeconomic capacity. This may include phasing in implementation, particularly if the technology that is adopted requires a complete reengineering of registration processes (see paras. 79 to 83 below). It should be noted that reference to electronic or online registration is not intended to recommend the use of any particular technology, but rather describes the performance of the business registry's functions through electronically operated devices. In keeping with that

[8] In keeping with a decision of the Working Group at its twenty-ninth session to avoid using terms such as "developing" or "developed" States, the Secretariat has made those adjustments in the text (paras. 48 and 55, A/CN.9/928).

approach, this guide has been drafted with the aim of accommodating the use of existing information and communications technology (ICT) as well as any emerging technology, such as distributed ledger technology, that States may consider appropriate when reforming their registration systems.[9]

12. Other features that encourage the registration of MSMEs include providing registration and post-registration services at no cost or at low cost, and collecting and maintaining good quality and reliable information on registered businesses. Importantly, establishing a one-stop shop for business registration and registration with other public authorities, such as taxation and social security authorities, greatly facilitates such registration, particularly in the case of MSMEs. In this regard, it should be noted that the terms "business registry" and "one-stop shop" (i.e. a single interface for business registration) as used in this draft guide are not intended to be interchangeable. When these materials refer to the "business registry", it means the system for receiving, storing and making accessible to the public certain information about business entities. When the term "one-stop shop" is used, it refers to a single entry point, physical or electronic, that a business can use to achieve not only its registration with the business registry, but that acts as a single entry point to all other regulatory functions in the State that relate to starting and operating a business, including, at a minimum, registering for tax purposes and for social security services. This guide supports the view that one-stop shops are a key means to improve institutional interoperability among relevant public authorities and that States should use one-stop shops to establish integrated registration procedures for the establishment of a business (see paras. 100 and 101 and rec. 14 below).[10]

13. These materials have benefited from various tools prepared by international organizations that have supported such reform processes in numerous regions around the world. Data made available through the activity of international networks of business registries that, among other activities, survey and compare the practices of their affiliates in various States around the world have also been referenced. The main sources used in the preparation of this draft legislative guide include:

- How Many Stops in a One-Stop Shop? (Investment Climate, World Bank Group, 2009)
- Outsourcing of business registration activities, lessons from experience (Investment Climate Advisory Services, World Bank Group, 2010)
- Innovative Solutions for Business Entry Reforms: A Global Analysis (Investment Climate, World Bank Group, 2012)
- Reforming Business Registration: A Toolkit for the Practitioners (Investment Climate, World Bank Group, 2013)
- The annual International Business Registers Report (prepared previously by ECRF, and currently by ASORLAC, CRF, ECRF and IACA)
- The Business Facilitation Programme website (developed by UNCTAD)[11]
- Guide to the International Business Registers Surveys 2016 (available at http://www.ecrforum.org)
- [...]

[9] The Secretariat has included a reference to "distributed ledger technology" and other emerging technologies further to a request of the Working Group (see also para. 69 below) (para. 47, A/CN.9/928).

[10] The Secretariat has added the final sentence of this paragraph further to the decision of the Working Group at its twenty-ninth session that additional reference to the concept of "interoperability" should be included (para. 52, A/CN.9/928).

[11] UNCTAD is the United Nations Conference on Trade and Development. See http://businessfacilitation.org/index.html.

[*The Working Group may wish to note that reference to these specific resources will be changed in the final text to reference to the international organizations that prepared them*]

14. This legislative guide is addressed to States interested in the reform or improvement of their business registration system, and to all stakeholders in the State that are interested in or actively involved in the design and implementation of business registries, as well as to those that may be affected by or interested in the establishment and operation of a business registry. These may include:

(a) Policymakers;

(b) Registry system designers, including technical staff charged with the preparation of design specifications and with the fulfilment of the hardware and software requirements for the registry;

(c) Registry administrators and staff;

(d) Registry users, including business persons, consumers, and creditors, as well as the general public and all others with an interest in the appropriate functioning of the business registry;

(e) Credit agencies and other entities that will provide credit to a business;

(f) The general legal community, including academics, judges, arbitrators and practising lawyers; and

(g) All those involved in company law reform and the provision of technical assistance in the simplification of business registration, such as international organizations, bilateral donors, multilateral development banks and non-governmental organizations active in the field of business registration.

15. The present guide uses neutral legal terminology so that its recommendations can be adapted easily to the diverse legal traditions and drafting styles of different States. This draft legislative guide also takes a flexible approach, which will allow its recommendations to be implemented in accordance with local drafting conventions and legislative policies regarding which rules must be incorporated in principal legislation and which may be left to subordinate regulation or to ministerial or other administrative rules.

B. Terminology

16. The meaning and use of certain expressions that appear frequently in this draft legislative guide is explained in this paragraph. It is to be noted that whenever terms such as annual accounts, periodic returns, documents, forms (such as search forms, registration forms or other forms to request registry services), notices, notifications and written materials are used, reference is intended to include both their electronic and paper versions unless otherwise indicated in the text. Frequently used expressions include the following:

- *Annual accounts*: The term "annual accounts" means financial information on the business' activities prepared at the end of a financial year of the business (cf. "periodic returns").
- *Branch*: The term "branch" means an entity carrying on business in a new location either within the jurisdiction in which it was formed or in another domestic or cross-border jurisdiction. The branch is not a subsidiary and does not have a separate legal personality from the original or main business.
- *Business name*: The term "business name" means a name registered on behalf of a business.
- *Business registry* or *Business registration system*: The term "business registry" or "business registration system" means a State's system for receiving, storing and making accessible to the public certain information about businesses, as

distinct from mandatory registration by the business with other public authorities (e.g. taxation and social security authorities).

- *Deregistration*: The term "deregistration" means indicating in the registry that a business is no longer registered.

- *Electronic signature*: The term "electronic signature" means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message.[12]

- *Good quality and reliable*: A business registration system and the information it contains is of "good quality and reliable" when the registered information is kept as current and accurate as possible and the system may be considered positively in terms of performance and security. The term "reliable" does not refer to whether the information is legally binding on the registry, the registrant, the registered business, or third parties.[13]

- *ICT*: The term "ICT" means information and communications technology.

- *Information products*: The term "information products" means information that is processed or published by the business registry (in electronic or paper form) to convey data requested by users.

- *Information services*: The term "information services" means the system established by the business registry through which it supplies information products to users.[14]

- *Law*: The term "law" means the applicable law in the enacting State and is intended to include both the specific rules adopted to establish the business registry (whether such rules are found in legislation or in administrative regulations or guidelines; see also para. 1 in the Annex) and the broader body of domestic law that may be relevant to issues related to the business registry, but are found outside of the specific rules establishing the business registry.

- *Legally regulated economy*: The term "legally regulated economy" means economic activity that takes place in a State within the context of the legal and regulatory regime that the State has established to govern such activity. The legally regulated economy does not include commercial activity that takes place outside of that context (sometimes referred to as the "extralegal economy"), nor does it include illicit trade in goods or services.

- *Micro, small and medium-sized enterprises (MSMEs)*: The term "MSMEs" means micro, small and medium-sized enterprises as they are defined according to the criteria established by the State undertaking the business registration reforms.

- *One-stop shop*: The term "one-stop shop" means a physical office, a single interface on an electronic platform or an organization that carries out more than one function relating to the registration of a business with at least the business registry, as well as taxation and social security authorities necessary for the business to operate in the legally regulated economy. A one-stop shop should ensure the interoperability of all public authorities with which a business is required to register, and allow for the simultaneous sharing of information on

[12] See UNCITRAL Model Law on Electronic Signatures (2001), article 2.

[13] At its twenty-ninth session, the Working Group agreed to replace the definition of "reliable" with that of "good quality and reliable", which was said to be more consistent with the agreed revision of recommendation 4(d) (recommendation 3(d) in A/CN.9/WG.I/WP.106), and to delete the phrase "is not a legal standard" from the definition (para. 32, A/CN.9/928).

[14] The Secretariat has included the definition of "information products" and "information services" further to a comment of the Working Group at its twenty-ninth session that such terms could be defined in the section on "Terminology" (para. 90, A/CN.9/928).

the business among those authorities, as well as the use of a single integrated application form for registration with, and payment to, those authorities.[15]

- *Periodic returns*: The term "periodic returns" means a statement provided annually or at other prescribed intervals which gives essential information about a business' composition, activities, and financial status, and which, subject to applicable law, registered businesses may be required to file with an appropriate authority (cf. "annual accounts").

- *Protected data*: The term "protected data" means all information that must be kept confidential pursuant to the applicable law of the enacting State.

- *Registered business*: The term "registered business" means a business that, further to filing an application for registration, has been officially registered in the business registry.

- *Registered information*: The term "registered information" means information regarding the business that has been submitted to the registry, including protected data and information that will be made public.

- *Registrant*: The term "registrant" means the natural or legal person that submits the prescribed application form and any additional documents to a business registry.

- *Registrar*: The term "registrar" means the natural or legal person appointed pursuant to domestic law to supervise and administer the operation of the business registry.[16]

- *Unique identifier*[17]: The term "unique identifier" means a set of characters (numeric or alphanumeric) that is allocated only once to a business and that is used consistently by the public authorities of a State.

C. Legislative drafting considerations

17. States implementing the principles contained in this legislative guide should consider whether to include them in a law, in a subordinate regulation, in administrative guidelines or in more than one of these texts, depending on their legislative drafting conventions. This guide does not distinguish between these legislative mechanisms and uses "law" to denote both the rules adopted by the enacting State to establish the business registry and those provisions of domestic legislation in the broader sense that are somehow relevant to and touch upon issues related to business registration.

D. The reform process

18. Streamlining business registration to meet the key objective of simplifying the registration process and making it time and cost efficient, as well as user friendly (both for registrants and users searching the registry), usually requires undertaking reforms that address the enacting State's legal and institutional framework. It may also be necessary to reform the business processes that support the registration system. Sometimes reforms are needed in all of these areas. The approach taken in these reforms may vary considerably among States as the design and features of a

[15] At its twenty-ninth session, the Working Group agreed to standardize the phrase describing the main relevant public authorities in business registration throughout the legislative guide and to make reference to an integrated application form with those authorities in the definition of "one-stop shop" (para. 54, A/CN.9/928).

[16] The Secretariat has adjusted the definition of "registrar" to ensure improved consistency with paragraph 48 (para. 45 of A/CN.9/WG.I/WP.106) of this guide.

[17] Further to a suggestion made by the Working Group at its twenty-ninth session, that the use of the terms "unique business identifier" and "unique identifier" should be made consistent, the Secretariat has made the necessary revisions (para. 58, A/CN.9/928).

registration system are influenced by the State's level of development, priorities and laws. There are, however, several common issues that States should consider and several similar recommended steps for reform regardless of jurisdictional differences that may exist. These issues are examined below.

1. The reform catalysts

19. Business registration reform is a multifaceted reform process that addresses various aspects of the State apparatus; its implementation requires the participation of a broad range of stakeholders and a thorough understanding of the State's legal and economic conditions, as well as of the practical needs of registry personnel and the intended users of the registry. To be successful, the reform must be driven by the need to improve private sector development and, for this reason, it is advisable that the reform be part of a larger private sector development or public sector modernization programme. It is thus essential to gain an understanding of the importance of business registration in relation to other business environment challenges and of its relationship to other potential reforms. This analysis will require, as crucial preliminary steps, ensuring that domestic circumstances are amenable to a business registration reform programme, that incentives for such a reform exist and that there is support for such initiatives in the government and in the private sector prior to embarking on any reform effort.

(a) Relevance of a reform advocate

20. Support or even leadership from the highest levels of the State's government is of key importance for the success of the reform process. The engagement of relevant government ministries and political leadership in the reform effort facilitate the achievement of consensus on the steps required. This can be particularly important to facilitate access to financial resources, to make and implement decisions, or when it is necessary to move business registry functions from one branch of government to another or to outsource them.

(b) The steering committee

21. In order to oversee the day-to-day progress of the reform and to manage difficulties as they may arise, it is advisable that a steering committee be established to assist the State representative or body leading the reform. In addition to experts with technological, legal and administrative expertise, this committee should be composed of representatives of the public and private sector and should include a wide range of stakeholders, including those who can represent the perspectives of intended users. It may not always be necessary to create such a committee, since it may be possible to use existing mechanisms; in any event, a proliferation of committees is to be avoided, as their overall impact will be weakened.

22. The steering committee should have clearly defined functions and accountability; it is advisable that its initial setup be small and that it should grow progressively as momentum and stakeholder support increase. Although linked to the high-level government body spearheading and advocating for the reform, the committee should operate transparently and independently from the executive branch. In certain jurisdictions, regulatory reform bodies have later been transformed into more permanent institutions that drive ongoing work on regulatory governance and regulatory impact analysis.

23. The steering committee must nurture the reform process and consider how to address concerns raised in respect of it. Concerns could include those arising from bureaucratic inertia, or fears that registry employees may lose their jobs if their ICT skills are weak or if technology replaces human capital. Thus, it is likely to be important for the body overseeing the reform to be able to consider diverse interests and fully inform potential beneficiaries and political supporters.

(c) The project team

24. In collaboration with the steering committee, it is advisable that a project team be assigned the task of designing a reform programme tailored to an enacting State's circumstances and providing technical expertise to implement the reforms. A successful reform will require a team of international and local specialists, with expertise and experience in business registration reform, in legal and institutional reform, and in a variety of technology matters (for example, software design, hardware, database and web specialists).

(d) Awareness-raising strategies

25. States embarking on a reform process should consider appropriate communication strategies aimed at familiarizing businesses and other potential registry users with the operation of the registry and of the legal and economic significance of business registration. This effort should include informing businesses of the benefits of registration with the business registry and mandatory registration with other public authorities (e.g. taxation and social security), and of participation in the legally regulated economy (e.g. visibility to the public, the market and improved access to the banking system). Awareness should also be increased of the incentives that the State may offer businesses to operate in the legally regulated economy, including (see para. 27 below) the opportunity to participate in public procurement; legal validation of the business; access to flexible legal business forms and asset partitioning; the possibility of protecting the business' unique name and other intangible assets; opportunities for the business to grow and to have access to a specialized labour force and access to government assistance programmes. The awareness-raising strategy should also ensure that clear information is readily accessible on compliance with the law, fulfilment of the obligations taken on by registering (e.g. the payment of taxes) and potential penalties for non-compliance.[18]

26. Effective communication may also be expected to encourage the development of new businesses and to encourage existing businesses to comply with mandatory registrations, as well as to provide signals to potential investors about the enacting State's efforts to improve the business environment. Awareness-raising strategies should commence early in the reform process and should be maintained throughout it, including after the enactment of the legal infrastructure and implementation of the new business registration system. In coordination with the steering committee, the project team should determine which cost-effective media can best be used: these can include private-public dialogues, press conferences, seminars and workshops, television and radio programmes, newspapers, advertisements, and the preparation of detailed instructions on submitting registration information and obtaining information from the business registry. In order to raise MSME awareness of the reforms to the business registration system, it may be advisable to consider communication strategies tailored specifically to that audience.[19]

(e) Incentives for businesses to register

27. In addition to an efficient awareness-raising campaign, States should consider adding incentives for MSMEs and other businesses to comply with mandatory registration with public authorities through the provision of ancillary services for businesses that are in compliance. The types of incentives will vary according to the specific economic, business and regulatory context, and may include: promoting access to credit for registered businesses; offering accountancy training and services as well as assistance in the preparation of a business plan; providing credits for

[18] For a more detailed presentation of the advantages of operating in the legally regulated economy, and the incentives that can be offered to businesses that do so, see paragraphs 36 and 40 to 42 of A/CN.9/WG.I/WP.110. For more information on awareness-raising and compliance, see paragraphs 125 (para. 124 of A/CN.9/WG.I/WP.106), 212 and 213 (paras. 207 to 209 of A/CN.9/WG.I/WP.106) of this draft guide.

[19] See paragraphs 37 to 39 of A/CN.9/WG.I/WP.110.

training costs; establishing lower and simplified taxation rates and tax mediation services; providing business counselling services; providing monetary compensation, government subsidies or programmes to foster MSME growth and providing low-cost technological infrastructure.[20]

2. Phased reform process

28. The duration of a reform process can vary considerably, depending on the types of reforms implemented and on other circumstances relevant to the particular economy. While the most comprehensive approach may entail a complete reform of the business registry and the law establishing it, this may not be realistic in all cases and enacting States may wish to consider a phased implementation of their reform. In States with a large number of unregistered businesses, a reform process that adopts a "think small" approach at the outset might be more effective than a reform with a broader focus, which could be introduced at a later stage. For example, if the main objective is initially to promote the registration of MSMEs, simple solutions addressing their needs at the local level may be more successful than introducing sophisticated automated systems that require high-level technological infrastructure, and changes in the legal and institutional framework, and that may be more appropriate to larger businesses or businesses operating in the international market. Even when the reform is carried out in jurisdictions with more advanced business registration systems, it may be advisable to "start small" and pilot the reforms at a local level (for example, in a district or the capital) before extending them throughout the State. Success in a pilot stage can have a strong demonstration effect, and is likely to build support for continued reform.

I. Objectives of a business registry

29. The focus of the present legislative guide is primarily the business registry of a State and the adoption of best practices in order to optimise the operation of the business registration system for its users so that it is simple, efficient and cost-effective. However, in most States, in order for a business to participate in the legally regulated economy, it must usually register not only with the business registry but also with various additional public authorities (see also para. 63 below). In addition to the business registry, these authorities often include taxation and social security authorities. States wishing to facilitate the entry of businesses into the legally regulated economy should thus assess the multiple public authorities with which a business must register and consider ways to reduce the burden on businesses by streamlining those requirements. As examined in greater detail in this legislative guide (see paras. 93 to 103 and rec. 14 below), a best practice to accomplish that goal would be for a State to establish a one-stop shop for business registration and for registration, at a minimum, with taxation and social security authorities, subject to the legal and institutional organization of the enacting State.

Recommendation 1: Objectives of the business registry[21]

The law should ensure the establishment of a system of business registration that facilitates the operation of businesses in the legally regulated economy as part of the system of all registrations that may be required of a business and may include registration with business registry, taxation and social security authorities, as well as with other authorities.

[20] For a more comprehensive list of incentives, see paras. 40 to 42 of A/CN.9/WG.I/WP.110.

[21] At its twenty-ninth session, the Working Group agreed on the insertion of an additional recommendation after paragraph 29 (para. 26 of A/CN.9/WG.I/WP.106) (para. 24, A/CN.9/928).

A. Purposes of the business registry

30. The opening provisions of the law that establishes the business registry should set out explicitly the purpose of a system for the registration of businesses.

31. The law of the enacting State should establish which businesses are required to register with the business registry. Currently, many States require only businesses of a certain legal form to register, often focusing on those that have limited liability status. Requiring such businesses to register puts third parties dealing with them on notice of their limited liability status, as well as providing additional information in respect of the business. However, since business registration may be viewed as a key conduit through which businesses of all sizes and legal forms interact with the State and operate in the legally regulated economy, States may wish to permit (but not necessarily to require) all such businesses to register in the business registry. Through registration, a business becomes more visible not only in the marketplace, but also to States, who may then be able to more easily identify MSMEs in need of support, and design appropriate programmes for those purposes (see the discussion in paras. 40 to 42 of A/CN.9/WG.I/WP.110). Permitting voluntary registration of a range of different legal forms of business may encourage the registration of MSMEs, assisting them in their growth in addition to facilitating their operation in the legally regulated economy (see also para. 3 above, para. 131 and rec. 20 below and A/CN.9/WG.I/WP.110).[22]

32. The following overarching principles should govern an effective system of business registration: (a) enabling businesses of all sizes and legal forms to be visible in the marketplace and to operate effectively in the legally regulated economy; and (b) enabling MSMEs to increase their business opportunities and to improve the profitability of their businesses.

Recommendation 2: Purposes of the business registry

The law should provide that the business registry is established for the purposes of:

(a) Providing to a business an identity that is recognized by the enacting State; and

(b) Receiving, storing and making information in respect of registered businesses accessible to the public.[23]

B. Simple and predictable system of laws permitting registration for all businesses

33. States should set the foundations of their business registry by way of law. In order to foster a transparent and reliable business registration system, with clear accountability of the registrar (see also paras. 47 and 49 below), that law should be simple and straightforward. Care should be taken to limit or avoid any unnecessary use of discretionary power, and to provide for appropriate safeguards against its arbitrary use. However, some discretion should be permitted to the registrar in order to ensure the smooth functioning of the system. For example, subject to the

[22] As agreed by the Working Group at its twenty-ninth session, the Secretariat has added a reference to recommendation 20 (recommendation 19 in A/CN.9/WG.I/WP.106) in paragraph 31 (para. 28 of A/CN.9/WG.I/WP.106). In respect of the comments of the Working Group that any necessary clarification should be made to indicate that it was for each State to determine which businesses were required to register, the opening sentence of paragraph 31 and the reference to voluntary registration in the second and third sentences provide information on this aspect (para. 25, A/CN.9/928).

[23] At its twenty-ninth session, the Working Group agreed to: (a) end recommendation 2(a) (recommendation 1(a) in A/CN.9/WG.I/WP.106) after the term "enacting State", and (b) to make recommendation 2(b) compatible with the definition of "business registry or business registration system" in paragraph 16 of the legislative guide (para. 13 of A/CN.9/WG.I/WP.106) (para. 26, A/CN.9/928).

requirements of the law and prior notice to the registrant, the registrar may be allowed to correct errors in the registered information (see also paras. 153 and 233 below).

34. The applicable law in each State should determine which business forms are required to register, and which additional conditions those businesses may have to fulfil as part of that requirement. Business registration may not be required for all businesses, but it may facilitate the effective participation of all businesses, including MSMEs, in the legally regulated economy (see paras. 129 to 132 below and rec. 20). States should thus consider enabling[24] businesses of all sizes and legal forms to register in an appropriate business registry, or create a single business registry that is tailored to accommodate registration by a range of businesses of different sizes and different legal forms.

35. The law governing registration with the business registry and other public authorities (including taxation and social security authorities) should also provide for simplified registration and post-registration procedures in order to promote registration of MSMEs. The goal should be for States to establish procedures with only the minimum necessary requirements for MSMEs and other businesses to register in order to operate in the legally regulated economy. Of course, businesses with more complex legal forms would be subject to additional information requirements under the law of the enacting State as a consequence of their particular legal form or type of business.

36. Further, regardless of the approach chosen to maintain updated information in the business registry, it would be advisable to make updating the records of MSMEs as simple as possible. This could involve a number of different approaches examined in greater detail below, such as extending the period of time for such businesses to declare a change; harmonizing the information needed when the same information is repeatedly required; or exempting MSMEs from certain obligations in specific cases (see also paras. 163 to 167 and rec. 30 below).

Recommendation 3: Simple and predictable system of laws permitting registration for all businesses

The law should:

(a) Adopt a simple structure for rules governing the business registry and avoid the unnecessary use of exceptions or granting of discretionary power; and

(b) Ensure that micro, small and medium-sized enterprises (MSMEs) that are required or permitted to register are subject to the minimum procedures necessary pursuant to the law.[25]

C. Key features of a business registration system

37. To be effective in registering businesses of all sizes, a business registration system should ensure that, to the extent possible, the registration process is simple, time and cost efficient, user-friendly and publicly accessible. Moreover, care should be taken to ensure that the publicly available registered information on businesses is easily searchable and retrievable, and that the process through which the registered information is collected and maintained as well as the registry system are kept as current, reliable and secure as possible.

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[24] The Secretariat has added a reference to recommendation 20 (recommendation 19 in A/CN.9/WG.I/WP.106) in paragraph 34 (para. 31 of A/CN.9/WG.I/WP.106) as agreed by the Working Group at its twenty-ninth session (para. 28, A/CN.9/928).

[25] At its twenty-ninth session, the Working Group requested the Secretariat to (a) delete recommendation 3(b) (recommendation 2(b) in A/CN.9/WG.I/WP.106); (b) make the necessary adjustments to the title of the recommendation; (c) adjust the text of recommendation 3(c) to clarify that business registration was not mandatory for MSMEs; and (d) adjust the final phrase of recommendation 3(c) along the lines of "subject to the minimum procedures as required by law" (paras. 29 and 30, A/CN.9/928).

38. The reliability of the business registration system and the information contained in the registry is a recurring theme in the present guide. In keeping with the definition of "good quality and reliable" in paragraph 16 above, the reliability of the system refers to a system that may be considered positively in terms of performance and security and in which registered information is kept as current and accurate as possible. "Good quality and reliable" does not refer to the method that a State uses to ensure that reliability, and this legislative guide leaves it to each enacting State to determine how best to ensure the reliability of its business registration system and the information it contains in light of its own context and legal tradition. Reliability in this guide does not refer to whether or not the information in the business registry is legally binding on the registry, the registrant, the registered business or on third parties, nor to whether the enacting State uses a declaratory approach or an approval approach in respect of its business registration system. However, the extent to which information in the registry is legally binding and whether the State adopts a declaratory system or an approval system (see paras. 121 to 123 below) are aspects that should be made clear by the enacting State in its business registry law and on the business registry itself.

39. Regardless of which registration system is adopted, maintaining high quality, current and reliable information is imperative for the business registry in order to make the information useful for the registry users and to establish confidence in business registry services. This applies not only to the information provided when applying to register a business, but also to the information that the entrepreneur submits during the lifetime of the business. It is thus important that the information meets certain requirements in the way it is submitted to the registry and then made available to the public (see, for example, paras. 40 and 41 below).[26] For these reasons, States should devise provisions that allow the registry to operate according to principles of transparency and efficiency in the way information is collected, maintained and released.

40. The registry can implement certain procedures in order to ensure that the information maintained in the registry is of good quality and reliable. Those procedures, which will be further discussed below, can be grouped into two broad categories. One group comprises those measures aimed at protecting the identity and integrity of a business through the prevention of corporate identity theft or the adoption of identity verification methods for those who provide information to the business registry. A wide range of measures can be implemented in this regard, such as the use of monitoring systems or establishing access through the use of passwords to prevent corporate identity theft; or the use of electronic signatures and electronic certificates to verify the identity of those who submit information to the registry. Business registries usually adopt more than one type of measure.

41. Another group of measures that registries can implement to ensure the good quality and reliability of the registered information pertains to the way information is collected and maintained in the registry and the frequency with which it is updated (see paras. 159 to 167 and recs. 29 and 30 below). Ensuring that the registry record is regularly updated is of key importance. In electronic registry systems, the software will usually provide for automated periodic updating as amendments are submitted by businesses. However, when registries use paper-based or mixed systems, the registrar must ensure that updates to the registry record are entered as soon as practicable, and if possible, in real time or at least once daily. To underpin these measures, it is important for States to establish effective enforcement mechanisms upon which registries can rely when a business fails to provide accurate and complete information (see paras. 208 to 213 and recs. 44 and 45 below).

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[26] The Secretariat has included a cross reference to paragraphs 40 and 41 (paras. 37 and 38 of A/CN.9/WG.I/WP.106) in response to concerns expressed by the Working Group at its twenty-ninth session about the lack of clarity of the penultimate sentence of paragraph 39 (para. 36 of A/CN.9/WG.I/WP.106) (para. 32, A/CN.9/928).

42. Moreover, in order to enhance the quality and reliability of the information deposited in the registry, enacting States should preserve the integrity and security of the registry record itself. Steps to achieve those goals include: (a) requiring the registry to request and maintain the identity of the registrant; (b) obligating the registry to notify promptly the business about the registration and any changes made to the registered information; and (c) eliminating any discretion on the part of the registrar to modify information that has been submitted to the registry.[27]

Recommendation 4: Key features of a business registration system

The law should ensure that the business registration system contains the following key features:

(a) Registration is publicly accessible, simple, user-friendly and time- and cost-efficient;

(b) The registration methods are suited to the needs of MSMEs;

(c) The publicly available registered information on businesses is easily searchable and retrievable; and

(d) The registry system and the registered information are of good quality and reliable, and are maintained that way through periodic updates and system verification.[28]

II. Establishment and functions of the business registry

43. Several different approaches may be taken in establishing an effective business registration system, but there is broad agreement on certain key objectives of such systems. Regardless of differences in the way business registries may operate, efficient business registries have a similar structure and perform similar functions when carrying out the registration of a new business or in recording the changes that may occur in respect of an existing business.

A. Responsible authority

44. In establishing or reforming a business registry, enacting States will have to decide how the business registry will be organized and operated. Different approaches can be taken regarding its form, the most common of which is based on oversight by the government. In such States, a government department or agency, staffed by civil servants, and usually established under the authority of a particular government department or ministry, operates the registration system. Another type of organization of a business registry is one that is subject to administrative oversight by the judiciary. In such contexts, the registration body might be a court or a judicial registry whose function, usually specified in the applicable commercial code, is concerned with verifying the business requisites for registration but does not require prior judicial approval of a business seeking to register.

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[27] At its twenty-ninth session, the Working Group requested the Secretariat to replace the phrase "to deny access to registry services" in subparagraph 42(c) (subpara. 39(c) of A/CN.9/WG.I/WP.106) (after "registry staff to") with text along the lines of "to modify information that has been submitted to the registry" (para. 34, A/CN.9/928).

[28] At its twenty-ninth session, the Working Group requested the Secretariat (a) to ensure consistency between the terms "system", "process" and "information" in paragraph 37 (para. 34 of A/CN.9/WG.I/WP.106) and recommendation 4 (recommendation 3 in A/CN.9/WG.I/WP.106); (b) to clarify in recommendation 4(d) that the registry system and the registered information are of good quality and reliable when they are secure and kept current with periodic updates; and (c) to adjust the terminology of recommendation 4(d), since certain terms might not be used interchangeably in relation to systems and information. The Secretariat has implemented those changes (paras. 31 and 32, A/CN.9/928).

45. States may also decide to outsource some or all of the registry operations through a contractual or other legal arrangement that may involve public-private partnerships or the private sector. When registration is outsourced to the private sector, it remains a function of the government, but the day-to-day operation of the system is entrusted to privately owned companies. In one jurisdiction, for example, such an outsourcing was accomplished by way of appointing a private company, in accordance with the law, as the assistant registrar with full authority to run the registration function. However, operating the registry through public-private partnerships or private sector companies does not yet appear to be as common as the operation of the registry by a government agency.[29] States may also decide to form entities with a separate legal personality, such as chambers of commerce, with the object of managing and developing the business registry, or to establish by law registries as autonomous or quasi-autonomous agencies, which can have their own business accounts and operate in accordance with the applicable regulations governing public authorities. In one State, for example, the business registry is a separate legal person that acts under the supervision of the Ministry of Justice, while in another State the registry is an administratively separate executive agency of a government department, but does not have separate legal status. In deciding which form of organization to adopt, States will have to consider their specific domestic circumstances, evaluate the challenges and trade-offs of the various forms of organization and then determine which one best meets the State's priorities and can be achieved within the limits of its human, technological and financial resources.

46. While the day-to-day operation of the registry may be delegated to a private sector firm, the enacting State should always retain the liability for ensuring that the registry is operated in accordance with the applicable law. For the purposes of establishing public trust in the business registry and preventing the unauthorized commercialization or fraudulent use of information in the registry record, the enacting State should retain its competence over the registry record. Furthermore, the State should also ensure that, regardless of the daily operation or the structure of the business registry, the State retains the right to control the access to and use of the data and information in the registry.

Recommendation 5: Responsible authority

The law should provide that:

(a) The business registry should be operated by the State or by an authority appointed by that State; and

(b) The State retains its competence over the business registry.

B. Appointment and accountability of the registrar

47. The law of the State should set out the procedure to appoint and dismiss the registrar, as well as the duties of the registrar, and the authority empowered to supervise the registrar in the performance of those duties.

48. "Registrar" is a defined term and refers to a natural or legal person appointed to supervise and administer the business registry (see para. 16 above). In keeping with the practice of some States, it should also be noted that the appointment of a registrar is intended to include all methods by which a registrar can be selected, including

[29] Arrangements involving contracting with the private sector to provide business registration services require careful consideration of several legal and policy issues, such as the responsibilities of the government and the private provider, the form of the arrangements, the allocation of risk, and dispute resolution

through election. Further, States may permit the registrar to delegate its powers to persons appointed to assist the registrar in the performance of its duties.[30]

49. In addition, the laws of the enacting State should clearly set out the functions of the registrar in order to ensure the registrar's accountability in the operation of the registry and the minimization of any potential for abuse of authority. In this regard, the applicable law of the enacting State should establish principles for the liability of the registrar and the registry staff to ensure their appropriate conduct in administering the business registry (the potential liability of the registrar and the registry staff are addressed in paras. 214 to 219 and rec. 46 below).

Recommendation 6: Appointment and accountability of the registrar

The law should:

(a) Provide that [*the person or entity authorized by the enacting State or by the law of the enacting State*] has the authority to appoint and dismiss the registrar and to monitor the registrar's performance; and

(b) Determine the registrar's powers and duties and the extent to which those powers and duties may be delegated.

C. Transparency in the operation of the business registration system

50. Laws that foster the transparent and reliable operation of the system for business registration have a number of features. They should allow registration to occur as a simplified process[31] with a limited number of steps, and they should limit interaction with registry authorities, as well as provide short and specified turn-around times, be inexpensive, result in registration of a long-term or unlimited duration, apply throughout the jurisdiction and make registration easily accessible for registrants.

51. Registries should also establish "service standards" that would define the services to which users are entitled and may expect to receive, while at the same time providing the registry with performance goals that the registry should aim to achieve. Such service standards could include, for example, rules on the correction of errors (see paras. 33 above, and 153 and 233 below), rules governing the maximum length of time for which a registry may be unavailable (such as for electronic servicing) and providing advance notice of any expected down time. Service standards contribute to ensuring further transparency and accountability in the administration of the registry, as such standards provide benchmarks to monitor the quality of the services provided and the performance of the registry staff.

Recommendation 7: Transparency in the operation of the business registration system

The law should ensure that the rules, procedures and service standards that are developed for the operation of the business registration system are made public to ensure transparency of the registration procedures.[32]

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[30] At its twenty-ninth session, the Working Group agreed that the term "should" in the final sentence of paragraph 48 (para. 45 of A/CN.9/WG.I/WP.106) should be changed to "may", and that the commentary should be adjusted to note that the "appointment" of a registrar was intended to include all methods by which a registrar was selected, including by way of election (para. 36, A/CN.9/928).

[31] At its twenty-ninth session, the Working Group requested the Secretariat to include the concept of simplification of the registration process in paragraph 50 (para. 47 of A/CN.9/WG.I/WP.106) (para. 37, A/CN.9/928).

[32] At its twenty-ninth session, the Working Group agreed to: (a) change the phrase "rules or criteria" to "rules, procedures and service standards", and (b) include the phrase "developed for the operation of the business registration system" (para. 38, A/CN.9/928). Moreover, it was agreed that all recommendations in the draft guide should commence with: "The law should" (para. 89, A/CN.9/928).

D. Use of standard registration forms

52. Another approach that is often used to promote transparency and reliability in the operation of the business registry is the use of simple standard registration forms paired with clear guidance to the registrant on how to complete them. Such forms can easily be completed by businesses without the need to seek the assistance of an intermediary, thus reducing the cost and de facto contributing to the promotion of business registration among MSMEs. These forms also help prevent errors in entering the data by business registry staff, thus speeding up the overall process. In some jurisdictions, the adoption of standardized registration forms has been instrumental in streamlining the registration requirements and disposing of unnecessary documents. Moreover, in jurisdictions with enhanced interoperability between the public authorities involved in the establishment of a business (e.g. the business registry, taxation and social security authorities), the adoption of a standardized registration form that consolidates in one form all of the information required of a business by such authorities has reduced duplication of information requests and has enabled the streamlining of registration procedures with multiple authorities. It should be noted that the use of standard registration forms should not preclude a business from submitting to the registrar additional materials and documents required by applicable law for the creation of the business, or in the exercise of the freedom of contract in establishing the business, such as agreements in respect of the internal operation of the business or additional information in respect of its financial state.[33]

Recommendation 8: Use of standard registration forms

The law should provide that simple[34] standard registration forms are introduced to enable the registration of a business and the registrar should ensure that guidance is available to registrants on how to complete those forms.

E. Capacity-building for registry staff

53. Once a reform of the business registration system has been initiated, developing the capacity of the personnel entrusted with business registration functions is an important aspect of the process. Poor service often affects the efficiency of the system and can result in errors or necessitate multiple visits to the registry by users. Capacity development of registry staff could not only focus on enhancing their performance and improving their knowledge of the new registration processes, ICT solutions and client orientation, but staff could also be trained in new ways of improving business registration.

54. Different approaches to capacity-building can be followed, from the more traditional training methods based on lectures and classroom activities, to more innovative ways that can be driven by the introduction of new business registration systems. In some jurisdictions, team-building activities and role-playing have been used with some success, since reforms often break barriers between various government departments and require the improvement of the flow of information among them, as well as an understanding of different aspects of the procedures with which specific registry staff may not be familiar. In other cases, States have also opted for developing action plans with annual targets in order to meet standards of performance consistent with global best practices and trends, and they have linked promotions and bonuses for staff to the achievement of the action plan's goals. In

[33] At its twenty-ninth session, the Working Group agreed to incorporate the text of footnote 58 in A/CN.9/WG.I/WP.106 and to include a reference to Part VII (para. 39, A/CN.9/928). The Secretariat has not included a reference to Part VII in the commentary, since it may not be consistent with the text of paragraph 52 (para. 49 of A/CN.9/WG.I/WP.106), as recommendation 40 and its commentary refer to the approach States should take when establishing fees for business registry services.

[34] At its twenty-ninth session, the Working Group agreed to insert the word "simple" before "standard registration forms" (para. 39, A/CN.9/928).

other cases, States have decided to introduce new corporate values in order to enhance the public service system, including business registration. Although the relevant governmental authority will usually take the lead in organizing capacity development programmes for the registry staff, the expertise of local legal and business communities could also be enlisted to assist.

55. Peer-to-peer learning and the establishment of national and international networks are also effective approaches to build capacity to operate the registry. These tools enable registry staff to visit other jurisdictions and States with efficient and effective business registration systems. In order to maximize the impact of such visits, it is important that they occur in jurisdictions familiar to the jurisdiction undergoing the reform. This approach has been followed with success in several jurisdictions engaging in business registration reform. International forums and networks also provide platforms for sharing knowledge and exchanging ideas for implementing business registration reform among registry personnel from around the world.

56. In order to facilitate business registration, it may be equally important to build capacity on the part of intermediaries in States where the services of those professionals are required to register a business (see paras. 121 and 122 below).

Recommendation 9: Capacity-building for registry staff

The law should ensure that appropriate programmes are established to develop and strengthen the knowledge and skills of the registry staff on business registration procedures, service standards and the operation of electronic registries, as well as the ability of registry staff to deliver requested services.

F. Core functions of business registries

57. There is no standard approach in establishing a business registry or in streamlining an existing one: models of organization and levels of complexity can vary greatly depending on a State's level of development, its priorities and its legislation. However, regardless of the structure and organization of the registry, certain core functions can be said to be common to all registries.

58. Subject to the enacting State's legal and institutional organization, core functions in addition to those listed below may be added to the business registry. But, in keeping with the overarching principles governing an effective business registration system (see para. 32 above), the core functions of business registries are, at a minimum, to:

(a) Register a business when it fulfils the necessary conditions established by the law of the enacting State, which may include conferring legal existence on the business and recording that status;

(b) Publish and make accessible good quality and reliable information on the business to be registered so as to facilitate trade and interactions between business partners, the public and the State, including when such interactions take place in a cross-border context;

(c) Assign a unique identifier to the business to facilitate information exchange between the business and the State;

(d) Share information on the registered business among public authorities to promote and facilitate coordination among such authorities;

(e) Protect the integrity of the registry record to protect the identity and integrity of the businesses that are registered;

(f) Publicize information concerning the establishment of a business, including any associated obligations and responsibilities of the registered business, as well as the legal effects of information maintained in the business registry; and

(g) Provide assistance to the business in searching and reserving a business name when required by the law so that the business can establish its commercial identity. [35]

59. In a standard registration process, the entry point for entrepreneurs to the business registry may be the support provided to them in choosing a unique name for the new business that they wish to establish. When registering, a business is usually required to have a name that must be sufficiently distinguishable from other business names within that jurisdiction so that the business will be recognized and identifiable under that name. Enacting States are likely to establish their own criteria for determining how to decide whether a business name is sufficiently distinguishable from other business names, and in any event, the assignment of a unique identifier will assist in ensuring the unique identity of the business within and across jurisdictions (see also paras. 104 to 111 below). Business registries usually assist entrepreneurs at this stage with a procedure that can be optional or mandatory, or they may provide business name searches as an information service. Registries may also offer a name reservation service prior to registering a new business, so that no other business can use that name. Such a name reservation service may be provided either as a separate procedure (again, which can be optional or mandatory), or as a service integrated into the overall business registration procedure.

60. Business registries also provide forms and various types of guidance to entrepreneurs preparing the application and other necessary documents for registration. Once the application is submitted, the registry performs a series of checks and control procedures to ensure that all the necessary information and documents are included in the application. In particular, a registry verifies the chosen business name as well as any requirements for registration that have been established in the State's applicable law, such as the legal capacity of the entrepreneur to operate the business. Some legal traditions may require the registry to perform simple control procedures (such as establishing that the name of the business is sufficiently unique), which means that if all of the basic administrative requirements are met, the registry must accept the information as filed and record it. Other legal traditions may require more thorough verification of the information filed, such as ensuring that the business name does not violate any intellectual property requirement or that the rights of businesses with similar names are not infringed before the registry can allocate a business name (in those regimes where the registry is mandated to do so). All such information is archived by the registry, either before or after the registration process is complete.

61. Payment of a registration fee (if any, see paras. 200 to 204 and rec. 40 below) must usually be made before the registration is complete. Once a business registration is complete, the registry issues a certificate that confirms the registration and contains information about the business. Since much of the registered information should be disclosed to interested parties, registries make their public components available through various means, including through publication on a website, or in publications such as the National Gazette or newspapers. Where the infrastructure permits, registries may offer, as an additional non-mandatory service, subscriptions to announcements of specific types of new registrations.

62. In accordance with the applicable law of the enacting State, registered information that is made available to the public can include specific information on the business structure, such as who is authorized to sign on behalf of the business or who serves as the business's legal representative. Basic information about the business, such as the name of the business, its telephone number, email and postal addresses (in addition to the addresses at which the businesses deemed to receive correspondence) can also be made public, but the publication of such details may be subject to the agreement of the business. When business registries collect

[35] At its twenty-ninth session, the Working Group requested the Secretariat to modify paragraph 58 (para. 55 of A/CN.9/WG.I/WP.106) in line with the revised text of recommendation 10 (recommendation 9 in in A/CN.9/WG.I/WP.106) (paras. 41 and 45, A/CN.9/928).

disaggregated information submitted on a voluntary basis on the registrant or the persons associated with the business according to gender or other indicators that could raise privacy issues (e.g. association with an ethnic or language group), the law should establish whether and subject to which conditions that information can be made available to the public (see para. 192 below).[36] In some States, public access to certain information in the business registry is provided free of charge (in respect of fees for information, see para. 205 and rec. 41 below).

63. A new business must usually register with several government agencies, such as taxation and social security authorities, which often require the same information as that gathered by the business registry. In certain States, the business registry provides to entrepreneurs information on the necessary requirements of other public authorities and refers them to the relevant agencies. In States with more developed registration systems, businesses may be assigned a registration number that also functions as a unique identifier across public authorities (see paras. 104 to 111 below), which can then be used in all of the interactions that the business has with government agencies, other businesses and banks. This greatly simplifies the establishment of a business since it allows the business registry to exchange more easily information with the other public institutions involved in the process. In several States that have reformed their registration systems, business registries function as one-stop shops to support registration with other authorities. The services operated by such outlets may include providing any necessary licensing, or they may simply provide information on the procedures to obtain such licences and refer the entrepreneur to the relevant agency. As noted above (see para. 12 above), this legislative guide takes the view that establishing such one-stop shops for registration with at least the business registry, taxation and social security authorities, and enhancement of the integration of the registration procedures of all such authorities is the best approach for States wishing to optimise their business registration system (see paras. 93 to 103 and rec. 14 below).

64. One important aspect that States should take into account when establishing a business registration system is whether the registry should also be required to record certain procedures that affect the status of the business, for example bankruptcy, merger, winding-up, or liquidation. The approach to such changes in status appears to vary from State to State. For example, in some States, registries are often also entrusted with the registration of bankruptcy cases, while in other States, they tend not to perform this function. In certain jurisdictions, registries are also given the task of registering mergers as well as the winding-up and liquidation of businesses. In any event, business registries naturally also record the end of the life span of any business that has permanently ceased to do business by deregistering it (see paras. 220 to 227 and recs. 47, 48 and 49 below).

65. The opening provisions of the law governing business registration may include a list of the various functions of the registry, with cross references to the relevant provisions of the law in which those functions are addressed in detail. The advantage of this approach is clarity and transparency as to the nature and scope of the issues that are dealt with in detail later in the law. The possible disadvantage is that the list may not be comprehensive or may be read as placing unintended limitations on the detailed provisions of the law to which cross reference is made. Accordingly, implementation of this approach requires special care to avoid any omissions or inconsistencies as well as to allow for the registry's interoperability with other public authorities in the jurisdiction, and for access to the information maintained in the registry.

[36] At its twenty-ninth session, the Working Group agreed to revise paragraph 62 (para. 59 of A/CN.9/WG.I/WP.106) by reorganizing the order in which information was presented, and including additional information that business registry could make accessible to the public (para. 41(c), A/CN.9/928). Moreover, the Secretariat has added reference to the collection of disaggregated data to the legislative guide as appropriate as agreed by the Working Group (para. 33, A/CN.9/928).

Recommendation 10: Core functions of business registries

The law should establish the core functions of the business registry, including:

(a) Registering the business when the business fulfils the necessary conditions established by the law;

(b) Providing access to the public of relevant information collected by the business registry;

(c) Assigning a unique identifier to the registered business;

(d) Sharing information among the requisite public authorities;

(e) Keeping the information in the business registry as current as possible;

(f) Protecting the integrity of the information in the registry record;

(g) Publicizing any relevant information on the establishment of the business, including the obligations and responsibilities of the business and the legal effects of the information publicly available on the business registry; and

(h) Assisting businesses in searching and reserving a business name when required by the law.[37]

G. Storage of information and access to it throughout the registry

66. When organizing the storage of the information contained in the business registry, States should be guided by the goals of efficiency, transparency and accessibility. Regardless of how a State decides to store and ensure the availability of the information throughout its registry system, its goal should be to achieve consistency in the identification and classification of registered businesses, as well as the efficient, non-duplicative collection of information on those businesses.

67. To achieve these goals, it is important that all business registration offices, sub-offices and repositories of registry information in a State be interconnected regardless of their physical location. In order to function efficiently, such interconnection should be established through an electronic interface linking all such outlets and allowing for their technical interoperability (see para. 77(c) below). Through these means, all information collected or stored anywhere in the system is capable of being processed or accessed in a timely fashion regardless of how (whether in electronic or paper format) or where it is collected, stored by or submitted to the registry. Ensuring the electronic interconnection of the entire business registry system would permit all information contained in it to be stored and made accessible in digital format and would permit the sharing of such information, possibly in real time, throughout the entire registry system, providing it simultaneously to multiple access points without regard to their geographic location (including business registry sub-offices, terminals, or using online technology). Further, access to the entirety of the information stored in the business registry should allow for its integration with other public authorities to permit information exchange with those authorities as well (see para. 77 (c) below).[38] This approach will strengthen the institutional interoperability among such public authorities in order not only to simplify the process of registration with the business registry, but also to streamline all registrations that may be required of a business at its establishment (see rec. 1 above).

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[37] At its twenty-ninth session, the Working Group agreed on a new text for recommendation 10 (recommendation 9 in A/CN.9/WG.I/WP.106) (para. 45, A/CN.9/928).

[38] Further to comments made by the Working Group at its twenty-ninth session that the intention of paragraphs 66 to 68 (paras. 63 to 65 of A/CN.9/WG.I/WP.106) was to ensure that information was stored and shared throughout the registry system through full interconnectivity and multiple access points, the Secretariat has made the necessary adjustments to paragraphs 64 and 65 (para. 46, A/CN.9/928).

68. Where such an interconnected business registry is set up, it may be necessary to streamline technical standards and specifications so that the information collected and shared is of similar quality and of a standardised nature. This will include: establishing appropriate procedures to handle the exchange of information and communication of errors between the various collection points for and repositories of the information, regardless of their location within the State; providing minimum information technology security standards to ensure, at least, secure channels for data exchange (for example, the use of "https" protocols); and ensuring the integrity of data while it is being exchanged.

Recommendation 11: Storage of information and access to it throughout the registry

The law should establish an interconnected registry system that would process, store and provide access to information received from registrants and registered businesses or entered by registry staff.[39]

III. Operation of the business registry

69. As noted above, business registration can be implemented through many different organizational tools that vary according to jurisdiction. States embarking on a reform process to simplify registration will have to identify the most appropriate and efficient solutions to deliver the service, given the prevailing domestic conditions. Regardless of the approach chosen by the State, aspects such as the general legal and institutional framework affecting business registration, the legal foundation and accountability of the entities mandated to operate the system and the budget needed by such entities should be carefully taken into account. Reform efforts rely to a different extent on a core set of tools, including: the use of technology; the establishment of a one-stop shop; and ensuring interconnectivity between the different authorities involved in the registration process (with the possible adoption of a unique identifier). States should also ensure that their reform efforts do not inadvertently exclude the adoption of emerging technologies that might further improve the operation of the business registry (e.g. the use of distributed ledger technology).[40]

A. Electronic, paper-based or mixed registry[41]

70. An important aspect to consider when reforming a business registration system is the form in which the application for registration should be filed and the form in which information contained in the registry should be stored. Paper-based registration requires sending documents (usually completed in handwritten form) by mail or delivering them by hand to the registry for manual processing. Hand delivery and manual processing are not unusual in many jurisdictions due to the lack of an advanced technological infrastructure. In such States, entrepreneurs may have to visit personally registration offices that are usually located in municipal areas that may not

[39] At its twenty-ninth session, the Working Group requested the Secretariat to replace the phrase "process and store all information" (between the terms "would" and "receive") to "process, store and provide access to information" to better reflect the focus of the recommendation on information storing and sharing (para. 46, A/CN.9/928).

[40] In keeping with the decision of the Working Group at its twenty-ninth session that reference to emerging technology should be included in the commentary, the Secretariat has added the final sentence (para. 47, A/CN.9/928) (see also para. 11 above).

[41] At its twenty-ninth session, the Working Group requested the Secretariat to ensure that all references to "paper-based" and "electronic" registry systems listed electronic systems first. The Secretariat has implemented that change throughout the guide save for the order of paragraphs 70 and 71 of this section (paras. 67 and 68 of A/CN.9/WG.I/WP.106), since the current drafting of these two paragraphs allows to better focus on the advantages of an electronic business registration system (para. 48, A/CN.9/928).

be easily reachable for many MSME entrepreneurs, particularly for those in rural areas. In addition, any copies of the documents required must usually be provided on paper. Paper-based registry systems can facilitate in-person communication between the registrant and the registry, and thus may offer an opportunity to clarify aspects of the requirements for registration. However, the labour-intensive nature of this procedure normally results in a time-consuming and expensive process (for example, it may require more than one visit to the business registry), both for the registry and for users, and it can easily lead to data entry errors. Furthermore, paper-based registry systems require considerable storage space as the documents with the registered information may have to be stored as hard copies (although some States using a mixed system may also scan documents and then destroy the paper versions after the expiry of a minimum legal period for their preservation; in this regard, see paras. 229 to 232 and rec. 51 below). Finally, registration requests transmitted by paper or fax also give rise to delays, since registrants must wait until registry staff manually carry out the business registration and certify it.

71. In comparison, online registration systems allow for improved efficiency of the registry and for more user-friendly services. This approach requires, at a minimum, that the information provided by the registrant be stored in electronic form in a computer database; the most advanced electronic registration systems, however, permit the direct electronic submission of business registration applications and relevant information (as well as searches of the registry) over the Internet or via direct networking systems as an alternative to paper-based submissions. The adoption of such systems enhances data integrity, information security, registration system transparency, and verification of business compliance, as well as permitting the avoidance of unnecessary or redundant information storage. Furthermore, when electronic submission of applications is allowed, business registries can produce standard forms that are easier to understand and therefore easier to complete correctly. Although the use of ICT solutions can carry with them risks of software errors, electronic systems do more to reduce those risks by providing automated error checks and other appropriate solutions. Such technology is also instrumental in the development of integrated registration systems and the implementation of unique identification numbers.

72. In addition to these features, which result in a more streamlined process and user-friendly services, electronic business registration and access to the business registry also offer the following advantages:

(a) Improved access for smaller businesses that operate at a distance from the registry offices;

(b) A very significant reduction in the time and cost required of the entrepreneur to perform the various registration steps, and consequently in the time and cost required before successful registration of a business, as well as in the day-to-day cost of operating the registry;

(c) The handling of increasing demands for company information from other government authorities;

(d) A reduction in the opportunity for fraudulent or improper conduct on the part of registry staff;

(e) A reduction in the potential liability of the registry to users who otherwise might suffer loss due to the failure of registry staff to enter accurately registration information;

(f) User access to registration and information services outside of normal business hours; and

(g) Possible revenue opportunities for the registry from other businesses and financial institutions that seek company information as potential trading counterparties and borrowers.[42]

73. Introducing electronic registration processes, however, often requires an in-depth re-engineering of the way in which the service is delivered, which may involve several core aspects of the State's governance systems in addition to its level of technological infrastructure, including: financial capability, organization and human resources capacity, legislative framework (e.g. commercial code and company law) and institutional setting. Therefore, States launching a reform process aiming at the automation of the business registry would be advised to carry out a careful assessment of the legal, institutional and procedural dimensions (such as legislation authorizing electronic signatures or information security laws, or establishing complex e-government platforms or other ICT infrastructure) in order to identify those areas where reforms are needed and to adopt those technology solutions that are most appropriate to their current needs and capabilities. In several States, only information about registering a business is currently available online, and a functioning electronic registry has not yet been implemented. Making information electronically available is certainly less expensive and less difficult to achieve than is the establishment of an electronic registry, and it does not require any legislative reform or specialized technology. While the adoption of a mixed registration system that combines electronic processing and paper-based manual submission and processing might thus be an appropriate interim solution, it does involve higher maintenance costs, and the ultimate goal of a State should remain the progressive development of fully electronic registration systems (see paras. 79 to 87 and rec. 12 below).

B. Features of an electronic registry

74. When the business registry record is computerized, the hardware and software specifications should be robust and should employ features that minimize the risk of data corruption, technical error and security breaches. Even in a paper-based registry, measures should be taken to ensure the security and integrity of the registry record, but this is more efficiently and easily accomplished if the registry record is electronic. (Regardless of its method of operation, it is important for the registry to have risk-mitigation measures in place: see paras. 235 and 236 and rec. 53 below.) In addition to database control programs, software must also be developed to manage such aspects as user communications, user accounts, payment of any required fees, financial accounting, computer-to-computer communication, internal workflow and the gathering of statistical data. Software applications enabling data collection would also assist the registry in making evidence-based decisions which would facilitate efficient administration of the system (for example, the collection of data on more frequent requests by registry users would enable evidence-based decisions on how best to allocate registry resources).[43] When the State's technological infrastructure is not sufficiently advanced to allow the features mentioned above to be implemented, it is nevertheless important that the software put in place be flexible enough to accommodate additional and more sophisticated features as they become more feasible in the future.

75. Implementing an online business registration system will require defining the technical standards of the online system, carefully evaluating the hardware and

[42] At its twenty-ninth session, the Working Group requested the Secretariat to delete the phrase "to inform their risk analysis of" in subparagraph 72(g) (subpara. 69(g) of A/CN.9/WG.I/WP.106) and to adjust the remaining text as necessary (para. 48, A/CN.9/928).

[43] For example, "application programming interfaces" (APIs) may be adopted. APIs have a wide variety of possible uses, such as enabling the submission of applications to the registry through simplified procedures, for example by pre-filling certain fields by default, or allowing users, and equipping systems with the proper software to connect directly to the registry and retrieve information automatically.

software needs of the business registry to make those standards operational in the context of the national technological infrastructure, and deciding whether it is feasible to develop the necessary hardware and software in-house or whether it must be purchased from private suppliers. In making that determination, it will be key to investigate whether a ready-made product is available that can easily be adapted to the needs of the State. If different suppliers are used for the hardware and the software, it is important that the software developer or provider is aware of the specifications of the hardware to be supplied, and vice versa.

76. Following more recent technological advances, one option States may want to consider is whether to rely on traditional software or to move to more sophisticated applications such as cloud computing, which is an Internet-based system that allows the delivery of different services (such as storing and processing of data) to an organization's computers through the Internet. The use of cloud computing allows for a considerable reduction in the resources needed to operate an electronic registration system, since the registry does not have to maintain its own technological infrastructure. However, data and information security can represent an issue when introducing such a system and it would be advisable for States to conduct a careful risk analysis before establishing a system exclusively based on cloud applications.

77. Additional aspects that States should consider when adopting an online registry include:

(a) Scalability: the ICT infrastructure should be capable of handling an increasing volume of users over time, as well as traffic peaks that may occasionally arise;

(b) Flexibility: the ICT infrastructure of the registry should be easily adaptable to new user and system requirements, and the migration of data from one technology to another may require data-cleansing aspects;

(c) Interoperability: the registry should be designed to allow (even at a later stage) integration with other automated systems, such as other governmental authorities operating in the jurisdiction and online or mobile payment portals;

(d) Costs: the ICT infrastructure should be financially sustainable both in terms of initial and operating costs; and

(e) Intellectual property rights: in order to avoid risks deriving from adverse circumstances that might affect an owner of intellectual property rights in the technology used (for example, if the owner ceases to operate or is prohibited from doing business with the government), the State should always either be granted ownership of the system or an unrestricted licence to the source code.

78. In terms of the cost of the ICT infrastructure, the level of security needed by an electronic registration system and its cost must be carefully addressed. In particular, it is important to align the risk attached to a specific interaction (between the registry and the business or the registry and other public authorities) with the costs and administration required to make that interaction secure. Low security may deter parties from using electronic services (unless it is mandatory), but costly high security measures could have the same effect.

C. Phased approach to the implementation of an electronic registry

79. The methods used to establish the online system should be consistent with the reforms required as they can determine the success or the failure of the initiative. Moving directly to a full online solution before re-engineering registry business processes would be a mistake in many cases, as the solutions designed would not be able to capture the technology's full benefits. Moreover, subject to the level of development of the implementing State, factors such as the existence and quality of the infrastructure and literacy rates (including computer literacy) of the intended users should be carefully considered before the adoption of an online system. Several

States, for example, must deal with a non-existent or weak ICT infrastructure, lack of dependable electricity supplies and Internet connectivity, and a low literacy rate, which may have a disproportionate effect on women and businesses in rural areas. In these instances, technical and capacity-building assistance programmes coordinated by international organizations might be necessary in order to progress towards the goal of a fully automated electronic registry.

80. In locations where Internet penetration is not extensive, a phased approach may be an appropriate way forward. Automation would start with the use of simple databases and workflow applications for basic operations, such as name searches or the sharing of information with other government authorities, and then would progress to more sophisticated web-based systems that would enable customers to conduct business with the registry entirely online. These web-based systems could be quite convenient for smaller businesses operating at a distance from the registry, provided that those entrepreneurs were able to access the system. The final phase of the approach would be to accommodate ICT interoperability between those authorities involved in business registration.

81. The simplest approach for States beginning their activity in this area would be to develop a content-rich website that consolidates registration information, provides downloadable forms, and enables users to submit feedback. This simple resource would allow users to obtain information and forms in one place and would make registries more efficient by enabling users to submit email inquiries before going to registry offices with the completed forms. Since this solution does not require a stable Internet connection, it may appeal to States with limited Internet access.

82. If only limited Internet bandwidth is available, then automating front-counter and back-office operations prior to moving online would be a suitable approach. If the registry has sub-offices outside its main location (for example, in rural areas), it would be important to establish a dedicated Internet connection with them. This approach would still require entrepreneurs to visit the registry, but at least it would establish a foundation on which the registry could later develop a more sophisticated web platform. A key factor even at this basic stage would be for the system to be able to digitize historical records and capture key information in the registry, such as the names of members or owners and directors of the business.

83. Once the State's technological capacity and Internet penetration allows for digital commerce, then platforms that enable businesses to apply and pay for registration online as well as to file annual accounts and update registration details as operations change can be developed. With regard to online payment of a registration fee, it should be noted that ICT-supported solutions would depend on a State's available modes of payment and on the regulatory framework that establishes the modes of payment that a public authority can accept. When the jurisdiction has enacted laws that allow for online payment, the most efficient option is to combine the filing of the electronic application and the fee payment into one step. Error checks should be included in ICT systems that incorporate this facility, so that applications are not submitted before payments are completed and registry officials can see payment information along with the application. When fee payment is required before registration of the business, this constitutes a separate procedural step and the use of ICT solutions in order to be user-friendly would require streamlining the procedures for filing the application and for payment (see also para. 77(c) above). In some States, the use of mobile payment systems might permit easier and more effective methods of payment for registration and other related fees. In such cases, the same considerations involved in establishing online payments (e.g. enacting appropriate laws, as well as designing efficient options to combine mobile payments and the filing of registration documents) should be applied in order to develop efficient solutions appropriate to the use of mobile technology.

84. As noted above (see para. 73) when introducing electronic registration systems, States should adopt legislation that facilitates the implementation of these electronic solutions, although the obligation to use such solutions should be considered only

when the various stakeholders concerned with the registration process (including the registrant, government authorities, and other relevant authorities) are prepared to comply. Furthermore, when developing such laws, States should take into account that while certain legal requirements can be checked electronically, the most complex aspects of the process may need to be addressed by a registry official.

85. Enacting States should also be aware that establishing an electronic registration system requires a well-designed legal and regulatory framework that promotes simplicity and flexibility and avoids, to the greatest extent possible, discretionary power and the making of exceptions (see para. 33 above). For example, provisions requiring the interpretation of the content of documents and the collection of various pieces of information are difficult to adapt to electronic processing; the same applies to granting authority to the registrar to establish fees for the services of the registry and establishing a complex structure of rules and exceptions.

86. When a State has developed the ICT infrastructure necessary to achieve full business registry automation, the integration of other online registration processes for taxation, social security and other purposes could be considered. Even if no integration with registrations required by other public authorities is built into the system, it would nevertheless be advisable that States implement data interchange capabilities so that the relevant business information could be shared across government authorities (see para. 77(c) above). A final improvement would be the development of mechanisms for disseminating value-added business information products to interested parties; such products could substantially contribute to the financial sustainability of the registry (see paras. 192 to 193 and 197 below).

87. One issue that would likely arise when the online registry is able to offer full-fledged electronic services would be whether to abolish any paper-based submission of information or to maintain both online and paper-based registration. In many jurisdictions, registries choose to have mixed solutions with a combination of electronic and paper documents or electronic and manual processing during case handling. This approach may result in considerable cost for registries, since the two systems require different tools and procedures. Moreover, if this option is chosen, it is important to establish rules to determine the time of registration as between electronic and paper-based submissions. Finally, paper applications must be processed in any case, so that the information included in a paper document can be transformed into data that can be processed electronically; this can be done by scanning the paper-based application for registration (possibly using optical character recognition technology so as to make the scanned document electronically searchable). However, in order to ensure that the record made by scanning correctly represents the paper application, the registry will likely have to employ staff to check that record, thus adding a step that increases costs and reduces the benefits of using an online system.

D. Other registration-related services supported by ICT solutions

88. Automation should enable the registry to perform other functions in addition to the processing of applications. Where States require user-friendly electronic filing and repopulated forms,[44] for example, it can assist businesses in the mandatory filing of periodic returns and annual accounts. Electronic filing and automated checks also help reduce processing time by the registry.

89. Electronically supported registration could also assist the registry in deregistration procedures, i.e. notations in the registry that a particular business is no longer registered (see paras. 225 to 227 and rec. 49 below). Such procedures usually

[44] Repopulated forms allow selected fields to be automatically filled based on information previously provided by the registrant or maintained in their user account. When changes in the registrant's information occur, the registrant is not required to fill out the entire form again, but only to enter the relevant changes. Information included in the repopulated form is stored and may be made accessible to and exchangeable with other relevant authorities.

require an official announcement that a business will be deregistered. The use of ICT can provide for the automation of such announcements, from initiating the process to producing a standard notice, thus helping registries to ensure that businesses are not deregistered before any time limit has elapsed and to reduce processing time. In order to be fully effective, however, adoption of an electronic registration system needs to be supported by streamlined procedures that enable the deregistration of businesses in a simplified and quick way.

90. Further, ICT solutions could be applied to assist in the filing of financial information in machine-readable format (such as extensible Business Reporting Language, or XBRL). For example, a platform could be provided to assist in the conversion of paper-based financial statements to XBRL format. Machine-readable financial data facilitates the aggregation and analysis of financial information, which could be of significant value to users of the registry.

91. Solutions using ICT could also support follow-up and enforcement procedures of business registries when businesses fail to comply with registration requirements. In one jurisdiction, for example, the back-office system of the registry monitors the records of businesses and detects whether certain circumstances suggest that the business is not in compliance with statutory requirements. An automatic notice to the business is then produced in order for it to remedy the situation. Should the business fail to do so within the statutory deadline, the ICT solution starts a new procedure to forward the case to the district court, which may make a decision on the compulsory liquidation of the business. Upon issuing an order for compulsory liquidation, the court notifies the registry, which then deregisters the business.

Recommendation 12: Electronic, paper-based or mixed registry

The law should provide that the optimal medium to operate an efficient business registry is electronic. Should full adoption of electronic services not yet be possible, such an approach should nonetheless be implemented to as great an extent as permitted by the current technological infrastructure of the enacting State, as well as its institutional framework and laws, and expanded as that infrastructure improves.

E. Electronic documents and electronic authentication methods

92. As noted above (see, for example, paras. 73 and 83), an efficient electronic business registry system should allow users to submit and receive documents in electronic format, to sign electronically when transmitting information or requests to the registry and to pay online for business registry services (see also para. 207 below and rec. 43). Therefore, as a preliminary step, appropriate domestic law should be in place to regulate all such matters (see also paras. 84 and 85 above).[45] States that enact legal regimes on electronic communications and electronic signatures may wish to consider the legislative texts prepared by UNCITRAL to govern electronic transactions.[46] Such texts establish the principles of technological neutrality and functional equivalence (see also paras. 12 to 15 in the Annex) that are needed to ensure equal treatment between electronic and paper-based communications; they also deal extensively with provisions covering the issues of legal validity of electronic

[45] At its twenty-ninth session, the Working Group agreed to include a cross reference to recommendation 43 (recommendation 42 in A/CN.9/WG.I/WP.106) and to include reference to the main features of an electronic business registry (i.e. electronic payments, electronic signatures and electronic documents) (para. 49, A/CN.9/928).

[46] Such texts include: the UNCITRAL Model Law on Electronic Commerce (1996); the UNCITRAL Model Law on Electronic Signatures (2001) and the United Nations Convention on the Use of Electronic Communications in International Contracts (2005). For further information, see http://www.uncitral.org/uncitral/uncitral_texts/electronic_commerce.html.

documents and signatures,[47] authentication, and the time and place of dispatch and receipt of electronic messages. Because of the way these texts, and other UNCITRAL legislative texts, are negotiated and adopted, they offer solutions appropriate to different legal traditions and to States at different stages of economic development. Furthermore, domestic legislation based on the UNCITRAL texts on electronic commerce will greatly facilitate cross-border recognition of electronic documents and signatures.

Recommendation 13: Electronic documents and electronic authentication methods[48]

The law should:

(a) Permit and encourage the use of electronic documents as well as of electronic signatures and other equivalent identification methods; and

(b) Regulate such use pursuant to principles established by law that electronic documents and signatures cannot be denied legal validity or enforceability, and that they are functionally equivalent to their paper-based counterparts.

F. A one-stop shop for business registration and registration with other authorities

93. As discussed above (beginning in para. 2), before a business may operate in the legally regulated economy, it is often required to register with several different government authorities in addition to the business registry. These additional authorities often require the same information that has already been gathered by the business registry. Entrepreneurs must often personally visit each authority and fill out multiple forms. Taxation, social security, justice and employment authorities are usually involved in this process; other administrative offices and institutions, specific to each jurisdiction, may also be involved. This often results in multiple procedures governed by different laws, duplication of information and lack of ownership or full control of the process by the authorities involved. Moreover, the entire process can require weeks, if not months.

94. The establishment of one-stop shops has thus become one of the most popular reforms to streamline business registration in recent years. One-stop shops are single outlets where entrepreneurs receive all of the information and forms they need in order to complete the necessary procedures to establish their business rather than having to visit several different government authorities.

95. Beyond this general description, the scope of one-stop shops can vary according to the services offered. Some one-stop shops only provide business registration services, which may still be an improvement if the registration process previously involved a number of separate visits to the relevant authorities; others carry out other functions related to the establishment of a business. A common additional function is registration with taxation authorities, although there are also examples of one-stop

[47] Further to changes made in recommendation 13 (recommendation 12 in A/CN.9/WG.I/WP.106), the Secretariat has added a new sentence at the end of this footnote (footnote 86 in A/CN.9/WG.I/WP.106) which would now read: "The principle of 'technological neutrality' means that the provisions of the law are 'neutral' and do not depend on or presuppose the use of particular types of technology and can be applied to generation, transmission or storage of all types of information. The principle of 'functional equivalence' establishes the criteria under which electronic communications and electronic signatures may be considered equivalent to paper-based communications and hand-written signatures. According to the principle of 'legal validity' communications and signatures cannot be denied legal effect, validity or enforceability on the sole ground that they are in electronic form."

[48] At its twenty-ninth session, the Working Group requested the Secretariat to redraft recommendation 13 (recommendation 12 in A/CN.9/WG.I/WP.106) by retaining subparagraph 13(a), combining elements of subparagraphs 13(b)(i) and 13(b)(iv) and deleting the remaining text (para. 51, A/CN.9/928).

shops dealing with registration for social security and statistical purposes and with obtaining the required licences from municipal and other authorities. In some cases, one-stop shops assist entrepreneurs not only with business licences and permits but also with investment, privatization procedures, official diaries and journals, intellectual property and import-export registries, tourism-related issues and State-owned property management, and may provide access to utilities and banking services.[49]

96. The functions of one-stop shops can be carried out through physical offices or an electronic platform. Physical premises, when in rural areas, are particularly appropriate for businesses with limited access to municipal centres; so, too, are mobile offices, particularly in places that are too remote for States to have physical premises. In addition to physical premises, online business registration can be offered as an option available for registering a business. Online one-stop shops take advantage of solutions supported by ICT, which allow for the rapid completion of several formalities due to the use of dedicated software. Such online portals may provide a fully interconnected system or may still entail separate registration in respect of some requirements, for example, for taxation services.

97. When establishing one-stop shops, in particular those performing functions in addition to business registration, States can choose among different approaches. In the "one door" approach, representatives of different government authorities involved in registration are brought together in one physical place, but the registrant must deal separately with each representative (for example, the business registry official dealing with the approval of the business name, the clerks checking the documents, and the taxation official), although the different authorities liaise among themselves. As may be apparent, this solution is relatively uncomplicated and would normally not require any change in law or ministerial responsibilities, but it would involve establishing effective cooperation between the different government ministries. One issue States should consider when opting for this approach would be how much authority the representatives of each government authority should have; for example, should they have the discretion to process the registration forms on site or would they simply be acting on behalf of their agencies and be required to take the documents to their home agencies for further processing? Similarly, it is also important to consider clarifying the lines of accountability of the various representatives from the different agencies to the administrator of the one-stop shop.

98. Another form of one-stop shop is the so-called "one window" or "one table" version, which offers a higher level of integration of the different public agencies involved in the establishment of a business. In this case, the one-stop shop combines the process for obtaining business and other registrations with public authorities, such as for taxation and social security, with other arrangements, like publishing the registration in a National Gazette or newspapers, when required. All relevant documents are submitted to the one-stop shop administrator who is authorized, and properly trained, to accept them on behalf of the various government authorities involved. Documents are then dispatched, electronically or by hand or courier, to the competent authority for processing. This type of one-stop shop requires detailed coordination between the different government authorities, which must modify their procedures to ensure an effective flow of information. A memorandum of understanding between the key agencies involved may be needed in order to establish the terms in respect of the sharing of business information. In some cases, taking such an approach may also require a change in legislation.

99. A third approach, which is less common, is based upon the establishment of a separate entity to coordinate the business registration function and to deal with other requirements that entrepreneurs must meet, such as making tax declarations, obtaining the requisite licences, and registering with social security authorities. Pursuant to this model, the entrepreneur would apply to the coordinating entity after

[49] Further to a decision of the Working Group at its twenty-ninth session, the Secretariat has modified paragraph 95 as requested (para. 53, A/CN.9/928).

having registered with the business registry in order to fulfil the various additional aspects of the procedures necessary prior to commencing business operations. Although this approach results in adding a step, it could be useful in some States since it avoids having to restructure the bodies with the main liability for business registration. On the other hand, the adoption of such a structure could involve an increase in the cost of the administrative functions and may only reduce time frames to the extent that it allows the various functions to take place successively or enables participants in the one-stop shop to network with the other agencies to speed up their operations. From the user's perspective, however, the advantage of being able to deal with a single organization remains.

100. Regardless of the approach chosen in the implementation of a one-stop shop, it is important to emphasize that such an arrangement does not require the establishment of a single government authority with authority over all of the other agencies related to the one-stop shop. Instead, it involves designating which government authority has authority over the single integrated interface, while all of the government authorities participating in the one-stop shop retain their functional autonomy. In order to enhance the benefits deriving from the establishment of a one-stop shop, it would be desirable that States facilitate improved technical and institutional interoperability among the public authorities participating in the one-stop shop, including through the adoption of a unique identifier for each business (see paras. 104 to 117 and rec. 15 below) and a single form for registration with, and payment of fees to each authority. In recent years, for example, several jurisdictions have adopted integrated online registration systems in which an application submitted for business registration includes all of the information required by business registry, taxation, social security and possibly other authorities. Once completed, the information in the integrated application is transmitted by the business registry to all relevant authorities. [50] Information and any necessary approvals from the other authorities are then communicated back to the registry, which immediately forwards the information and approvals to the business. While this is beneficial for all businesses, regardless of their size, it is particularly valuable for MSMEs, which may not have the resources necessary to cope with the compliance requirements of multiple government authorities in order to establish their business.

101. In States with developed ICT infrastructures, the functions of the agencies concerned with registration may be fully integrated through the use of a common database which is operated by one of the agencies involved and provides simultaneous registration for various purposes, i.e. business registration, taxation, and social security, etc. In some jurisdictions, a public agency (such as the tax administration) is responsible for the registration of businesses, or ad hoc entities have been set up to perform simultaneous registration with all public authorities. In other jurisdictions, advanced interoperability among the different public authorities involved in the registration process has resulted in a consolidated electronic registration form that can be repopulated [51] with information from the different agencies concerned. In jurisdictions where this approach has been developed, agencies perform regular file transfers to update the database as well as their own records; they have direct access to the common database and use the same back-office systems to update it; and the information registered is regularly verified by trusted staff of the agencies. Such strong coordination among the relevant public authorities is often based on regulatory provisions that allocate roles and responsibilities among the various agencies involved. Moreover, in certain jurisdictions such integrated delivery and governance of the registration process with the relevant public authorities takes the form of an

[50] Further to the decision of the Working Group at its twenty-ninth session, the Secretariat has adjusted paragraph 100 (para. 102 of A/CN.9/WG.I/WP.106) to include reference to an integrated application form for registration with the main relevant public authorities with which a business may have to register at its establishment (para. 56, A/CN.9/928).

[51] For details on repopulated forms, see footnote 44, supra.

electronic platform that allows other public authorities involved in the establishment of a business to connect to the platform and share information on the business.[52]

102. One issue that States should consider when establishing a one-stop shop is its location. It is usually advisable for the one-stop shop to be directly connected to the business registry office, either because it is hosted there or because the registry is part of the one-stop shop. The organization responsible for the one-stop shop could thus be the same as that which oversees the business registration process. This approach should take into account whether such organizations are equipped to administer the one-stop shop. Examples from various jurisdictions indicate that where authorities such as executive agencies are responsible for business registration, they possess the skills to perform one-stop shop functions as well. The same can be said of chambers of commerce, government commissions, and regulatory authorities. There are very few examples of adoption of a one-stop shop approach in those States where business registration is under the administrative oversight of the judiciary.

103. Although one-stop shops do not necessarily require changes to domestic legislation, it is important that the operation of such mechanisms be legally valid, which may involve adapting existing law to the new structure and method of proceeding. For example, effective functioning of the one-stop shop may require provisions governing the collection of information by public authorities as well as the exchange of information among such authorities. The extent of the changes required will thus vary according to the different needs of the State and the structure of its system of registration with public authorities mandatorily involved in the establishment of a business. For example, in several States, enhanced interoperability between the business registry, taxation and social security authorities through the one-stop shop may have to take into consideration that while registration with taxation and social security authorities is usually mandatory, registration with the business registry may be on a voluntary basis. In addition, one-stop shops should be given a sufficient budget (since they can be quite expensive to establish and maintain), they should be staffed with well-trained personnel, and they should have their performance regularly monitored by the supervising authority in accordance with user feedback.

Recommendation 14: A one-stop shop for business registration and registration with other authorities

The law should establish a one-stop shop for business registration and registration with other public authorities, including designating which public authority should oversee the functioning of the single interface. Such an interface:

(a) May consist of an electronic platform or physical offices; and

(b) Should integrate the services of as many public authorities requiring the same information as possible, including, but not limited to, business registry, taxation and social security authorities.[53]

G. Use of unique identifiers

104. In those jurisdictions where the government authorities with which businesses are required to register operate in isolation from each other, it is not unusual for this procedure to result in duplication of systems, processes and efforts. This approach is not only expensive but may cause errors. Moreover, if each authority assigns a registration number to the business when it registers with that authority, and the use and uniqueness of that number is restricted to the authority assigning it, information

[52] The Secretariat has made the necessary adjustments to this paragraph in light of the request made by the Working Group at its twenty-ninth session to ensure that the concept of "interoperability" was sufficiently included in the commentary (para. 52, A/CN.9/928).

[53] At its twenty-ninth session, the Working Group agreed to replace the phrase "but at a minimum should include" in recommendation 14(b) (recommendation 13(b) in A/CN.9/WG.I/WP.106) with "including, but not limited to" (para. 54, A/CN.9/928).

exchange among the authorities requires each authority to map the different identification numbers applied by the other authorities. When ICT solutions are used, they can facilitate such mapping, but even they cannot exclude the possibility that different entities will have the same identifier, thus reducing the benefits (in terms of cost and usefulness) obtained from the use of such tools.

105. States wishing to foster advanced integration among different authorities, in order to minimize duplication of procedures and facilitate exchange of information among relevant public authorities, may wish to consider that in recent years, tools have been developed to facilitate inter-agency cooperation. For example, one international organization has developed an online system that allows for the interoperability of the various public authorities involved in business registration with minimal or no change at all in the internal processes of the participating authorities nor in their computer systems.

106. Some States have introduced a more sophisticated approach, which considerably improves information exchange throughout the life cycle of a business. This approach, which is based on enhanced technical and institutional interoperability of the authorities involved (such as the ability of different ITC infrastructures to exchange and interpret data; or semantic interoperability — see para. 117 below), requires the use of a single unique business identification number or unique identifier, which ties information to a given business and allows for information in respect of it to be shared among business registry, taxation and social security authorities as well as other public authorities and possibly private agencies.

107. A unique identifier is structured as a set of characters (numeric or alphanumeric) which distinguish registered entities from each other. When designing a unique identifier, it may be advisable to build some flexibility in the structure of the identifier (for example, by allowing the addition of new characters to the identifier at a later stage) so that the identifier can be easily adaptable to new system requirements in a national or international context, or both. The unique identifier is allocated only once (usually upon establishment) to a single business and does not change during the existence of that business,[54] nor after its deregistration. The same unique identifier is used for that business by all public authorities (and possibly private agencies), which permits information about that particular registered entity to be shared.

108. The experience of States that have adopted unique identifiers has demonstrated the usefulness of such tools. As noted above, they permit all government authorities to identify easily new and existing businesses, and to verify information in respect of them. In addition, the use of unique identifiers improves the quality of the information contained in the business registry, and in the records of the other interconnected authorities, since the identifiers ensure that information is linked to the correct entity even if its identifying attributes (for example name, address, and type of business) change. Moreover, unique identifiers prevent the situation where, intentionally or unintentionally, businesses are assigned the same identification; this can be especially significant where financial benefits are granted to legal entities or where liability to third parties is concerned. Unique identifiers have been found to produce benefits for businesses as well, in that they considerably simplify business administration procedures: entrepreneurs do not have to manage different identifiers from different authorities, nor are they required to provide the same or similar information to different authorities. Introducing unique identifiers can also contribute to improving the visibility of businesses, in particular of MSMEs, with possible partners as well as with potential sources of finance, since it would assist in creating a safe and dependable connection between a business and all of the information that relates to it. This access to relevant information could facilitate the establishment of business relationships, including in the cross-border context.

[54] While the unique identifier does not change throughout the lifetime of a business, if the business changes its legal form, a new unique identifier must be allocated.

109. One issue a State may have to consider when introducing unique identifiers is that of individual businesses that do not possess a separate legal status from their owners. In such cases, taxation, social security or other authorities may often prefer to rely on the identifier for the individual, who may be a natural person, rather than on the business identifier. However, States may also opt to assign a separate identifier to a sole proprietor in a business capacity and in a personal capacity.

110. Situations may arise in which different agencies in the same jurisdiction allocate identifiers to businesses based on the particular legal form of the business. States should thus consider adopting a verification system to avoid multiple unique identifiers being allocated to the same business by different public authorities. If the identifier is assigned through a single jurisdictional database the risk of several identifiers being allocated to one business or of several businesses receiving the same identifier is considerably reduced.

111. The effective use of unique identifiers is enhanced by the complete adoption of electronic solutions that do not require manual intervention. However, electronic solutions are not a mandatory prerequisite to introducing unique identifiers, as they can also be effective in a paper-based environment. When unique identifiers are connected to an online registration system, it is important that the solution adopted fits the existing technology infrastructure.

(a) Allocation of unique identifiers

112. The use of unique identifiers requires sustained cooperation and coordination among the authorities involved, and a clear definition of their roles and responsibilities, as well as trust and collaboration between the public and business sectors. Since the introduction of a unique identifier does not of itself prevent government authorities from asking a business for information that has already been collected by other authorities, States should ensure that any reform process in this respect start with a clear and common understanding of the reform objectives among all the stakeholders involved. Moreover, States should ensure that a strong political commitment to the reform is in place. Potential partners ideally include the business registry, taxation and social security authorities, at a minimum, and if possible, the statistics office, the pension fund, and any other relevant authorities. If agreement among these stakeholders is elusive, at least the business registry, taxation and social security authorities should be involved. Information on the identifiers in use by the other authorities and within the business sector is also a prerequisite for reform, as is a comprehensive assessment to identify the needs of all stakeholders.

113. In order to permit the introduction of a unique identifier, the law should include provisions on a number of issues including:

(a) Identification of the authority charged with allocating the unique identifier;

(b) Allocation of the unique identifier before or immediately after registration with the authorities involved in the establishment of a business;

(c) Listing the information that will be related to the identifier, including at least the name, address and type of business;

(d) The legal mandate of the public authorities to use the unique identifier and related information, as well as any restrictions on requesting information from businesses;

(e) Access to registered information by public authorities and the private sector;

(f) Communication of business registration and amendments among the public authorities involved; and

(g) Communication of deregistration of businesses that cease to operate.

(b) Implementation of a unique identifier

114. Adoption of a unique identifier normally requires a centralized database linking the business to all relevant government authorities whose information and communication systems must be interoperable. This requirement can be a major obstacle to implementation if the technological infrastructure of the State is not sufficiently advanced.

115. States can introduce the unique identifier in one of two ways. In the first approach, business registration is the first step and includes the allocation of a unique identifier, which is made available (together with the identifying information) to the other authorities involved in the registration process (for example, taxation and social security authorities), and which is re-used by those authorities. In the second approach, the allocation of a unique identifier represents the beginning of the process. The unique identifier and all relevant information are then made available to the government authorities involved in business registration, including the business registry, and is then re-used by all authorities. Either of these two approaches can be followed by the authority entrusted with allocating unique identifiers, regardless of whether the authority is the business registry, a facility shared by public authorities or the taxation authority. The enacting State should determine the format of the unique identifier and which authority would have the authority to assign it. It is important to note that in some States, the use of a unique identifier may be restricted: in some jurisdictions, certain government authorities still allocate their own identification number[55] although the business is assigned a unique identifier.

116. Introducing a unique identifier usually requires adaptation both by public authorities in processing and filing information and by businesses in communicating with public authorities or other businesses. A unique identifier requires the conversion of existing identifiers, which can be accomplished in various ways. Taxation identifiers are often used as a starting point in designing a new identifier, since the records of the taxation authorities cover most types of businesses and are often the most current. Examples also exist in which, rather than introducing a completely new number, the taxation number itself is retained as the unique business number. New identification numbers can also be created using other techniques according to a State's registration procedures. In such a situation, it is important that each business, once assigned a new number, verify the related identifying information, such as its name, address, and type of activity.

117. The interoperability of the ICT systems of different agencies could be a major obstacle when implementing unique identifiers. The ability of different information technology infrastructures to exchange and interpret data, however, is only one aspect of interoperability that States should consider. Another issue is that of semantic interoperability, which can also pose a serious threat to a successful exchange of information among the authorities involved as well as between relevant authorities and users in the private sector. For this reason, it is important to ensure that the precise meaning of the information exchanged is understood and preserved throughout the process and that semantic descriptions are available to all of the stakeholders involved. Measures to ensure interoperability would thus require State action on a dual level: agreement on common definitions and terminology on the one hand, and the development of appropriate technology standards and formats on the other. This approach should be based on a mutual understanding of the legal foundation, responsibilities and procedures among all those involved in the process.

[55] In certain cases, authorities may keep their own numbering system in addition to using the unique identifier because of "legacy data", i.e. an obsolete format of identifying a business that cannot be converted into unique identifiers. In order to access such information, the registry must maintain the old identification number for internal purposes. In dealing with the public, however, the government authority should use for all purposes the unique identifier assigned to the business.

(c) Cross-border exchange of information among business registries

118. States are increasingly aware of the importance of improving the cross-border exchange of data and information between registries,[56] and sustained progress in respect of ICT development now allows this aspect to be addressed. Introducing unique identifiers that enable different public authorities to exchange information about a business could thus be relevant not only at the national level, but also in an international context. Unique identifiers can allow more efficient cross-border cooperation among business registries located in different States, as well as between business registries and public authorities in different States. Implementation of cross-border exchange of data and information can result in more dependable information for consumers and existing or potential business partners, including small businesses that provide cross-border services, as well as for potential sources of finance for the business (see paras. 198 and 199 and rec. 39 below).

119. Accordingly, States implementing reforms to streamline their business registration system may wish to consider adopting solutions that will, in future, facilitate such information exchanges between registries from different jurisdictions and to consult with States that have already implemented approaches that allow for such interoperability.[57] One such reform could include developing a system of business prefixes that would make the legal form of the business immediately recognizable across international and other borders.

Recommendation 15: Use of unique identifiers

The law should provide that a unique identifier should be allocated to each registered business and should:

(a) Be structured as a set of numeric or alphanumeric characters;

(b) Be unique to the business to which it has been allocated; and

(c) Remain unchanged and not be reallocated following any deregistration of the business.

Recommendation 16: Allocation of unique identifiers

The law should specify that the allocation of a unique identifier should be carried out either by the business registry upon registration of the business, or before registration by the designated authority. In either case, the unique identifier should then be made available to all other public authorities sharing the information associated with that identifier, and should be used in all official communication in respect of that business.

Recommendation 17: Implementation of a unique identifier

The law should ensure that, when adopting a system for the use of a unique identifier:

(a) There is interoperability between the technological infrastructure of the business registry and of the other public authorities sharing the information associated with the identifier; and

(b) That existing identifiers are linked to the unique identifier.

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[56] For example, there are some regional examples of cross-border information-sharing on businesses between States, but these are cases where the information-sharing was a component of a broader project involving significant economic integration of the relevant States.

[57] Some States with more integrated economies have developed an application that allows users to carry out simultaneous searches of the registries in both States by using their smartphones or mobile devices.

H. Sharing of protected data between public authorities

120. Although the adoption of a system of unique identifiers facilitates information sharing between public agencies,[58] it is important that sensitive data and privacy be protected. For this reason, when a State introduces interoperability among different authorities, it should address how public authorities may share protected data relating to individuals and businesses so that there is no infringement of the rights of data owners. States should thus ensure that all information sharing among public authorities occurs in accordance with the applicable law, which should establish the conditions under which such sharing is permitted. Moreover, the law should clearly identify which public authorities are involved, the information shared and the purpose for sharing, and establish that the owners of the data should be informed of the purposes for which their protected data may be shared among public authorities. Information-sharing should be based on the principle that only the minimum information necessary to achieve the public authority's purpose may be shared and that appropriate measures are in place to protect the rights to privacy of the business. When devising appropriate law or policy on the sharing of protected data between public authorities, it is important for States to consider the interoperability of those public authorities.

Recommendation 18: Sharing of protected data between public authorities

The law should establish that rules for the sharing of protected data between public authorities pursuant to a unique identifier system:

(a) Conform to the applicable law on the sharing of protected data between public authorities;

(b) Enable a public authority to access protected data only in order to carry out their statutory functions; and

(c) Enable a public authority to access protected data only in relation to those businesses with respect to which it has statutory authority.

IV. Registration of a business

A. Scope of examination by the registry

121. The method through which a business is registered varies from State to State, ranging from those that tend to regulate less and rely on the law that governs business behaviour, to States that opt for ex ante screening of a business before it may be registered (see also para. 60 above). In this regard, a State aiming at reforming the registration system must first decide which approach it will take to determine the scope of the examination that will have to be carried out by the registry. The State may thus choose to have a system where the registry only records information submitted to it by the registrant or a system where the registry is required to perform legal verifications and decide whether the business meets the criteria to register.[59]

122. States opting for ex ante verification of legal requirements and authorization before businesses can register (referred to as an "approval system") often have registration systems under the oversight of the judiciary in which intermediaries such

[58] At its twenty-ninth session, the Working Group requested the Secretariat to add the phrase "between public agencies" (para. 58, A/CN.9/928).

[59] At its twenty-ninth session, the Working Group agreed: (a) to replace the term "legal framework" in the opening sentence of paragraph 121 (para. 120 of A/CN.9/WG.I/WP.106) and elsewhere in the draft legislative guide with the defined term "law" (para. 13 of A/CN.9/WG.I/WP.106); and (b) to replace the phrase "only records facts" in the final sentence of paragraph 121 with "only records information submitted to the registry by the registrant" (para. 61, A/CN.9/928).

as notaries and lawyers perform a key role.[60] Other States structure their business registration as a declaratory system, in which no ex ante approval is required before the establishment of a business and where registration is an administrative process. In such declaratory systems, registration is under the oversight of a government department or authority, which can choose whether to operate the business registration system itself or to adopt other arrangements. There are also States that do not fall neatly within either category and in which there is a certain variation in the level and type of verification carried out as well as in the level of judiciary oversight.

123. Both the approval and the declaratory system have their advantages. Approval systems intend to protect third parties by preventing errors or omissions prior to registration. Courts and intermediaries exercise a formal review and, when appropriate, a substantive review of the prerequisites for the registration of a business. On the other hand, declaratory systems are said to reduce the inappropriate exercise of discretion; furthermore, they may reduce costs for registrants by negating the need to hire an intermediary and appear to have lower operational costs. Some systems have been said to merge advantages of both the declaratory system and the approval system by combining ex ante verification of the requirements for establishing a business with a reduced role for the courts and other intermediaries, thus simplifying procedures and shortening processing times.[61]

B. Accessibility of information on how to register

124. In order for the business registry to facilitate trade and interactions between business partners, the public and the State, easy access to business registry services should be provided both to businesses that want to register and to interested users who want to search the information on the business registry.

125. For businesses wanting or required to register, many microbusinesses may not be aware of the process of registration nor of its costs: they often overestimate time and cost, even after the registration process has been simplified. Easily retrievable information on the registration process should be made available (e.g. a list of the steps needed to achieve the registration; the necessary contacts; the data and documents required; the results to be expected; how long the process will take; methods of lodging complaints; and possible legal recourse), including on the advantages offered by a one-stop shop (where available) (see also paras. 93 to 103 and rec. 14 above) as well as on the relevant fees. This approach can reduce compliance costs, and make the outcome of the application more predictable, thus encouraging entrepreneurs to register. Restricted access to such information, on the other hand, might require meetings with registry officials in order to be apprised of the registration requirements or the involvement of intermediaries to facilitate the registration process.

126. In jurisdictions with developed ICT infrastructures, information on the registration process and documentation requirements should be available on the registry website or the website of the government authority overseeing the process. Moreover, the possibility of establishing direct contact with registry personnel through a dedicated email account of the registry, electronic contact forms or client service telephone numbers should also be provided. As discussed below (see para. 141), States should consider whether the information included on the website should be offered in a foreign language in addition to official and local languages. States with more than one official language should make the information available in all such languages.

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[60] At its twenty-ninth session, the Working Group agreed to replace the phrase "court-based registration systems" in the first sentence and throughout the text with an appropriate term such as "verification-based systems" or "systems under the oversight of the judiciary" (para. 62, A/CN.9/928).

[61] At its twenty-ninth session, the Working Group agreed to replace the text of paragraph 123 (para. 122 of A/CN.9/WG.I/WP.106) with text proposed at that session (para. 64, A/CN.9/928).

127. A lack of advanced technology, however, should not prevent access to information that could be ensured through other means, such as through the posting of communication notes at the premises of the relevant agency or dissemination through public notices. In some jurisdictions, for example, it is required to have large signs in front of business registry offices advising of their processes, time requirements and fees. In any event, information for businesses to register should be made available at no cost.

128. It is equally important that potential registry users are given clear information on the logistics of registration and on the public availability of information on the business registry. This may be achieved, for example, through the dissemination of guidelines and tutorials (ideally in both printed and electronic form) and through the availability of in-person information and training sessions. In some States, for example, prospective users of the system are referred to classroom-based or eLearning opportunities available through local educational institutions or professional associations.

Recommendation 19: Accessibility of information on how to register

The law should provide that the registrar should ensure that information on the business registration process and any applicable fees is widely publicized, readily retrievable, and available free of charge.

C. Businesses permitted or required to register

129. One of the key objectives of business registration is to permit businesses of all sizes and legal form to improve their visibility in the marketplace and to the public. This objective is of particular importance in assisting MSMEs to participate effectively in the economy and to take advantage of State programmes available to assist them. States should enable businesses of all sizes and legal form to register in an appropriate business registry, or create a single business registry that is tailored to accommodate registration by a range of different sizes and different legal forms of business.

130. Enabling the registration of businesses that would not otherwise be required to register with the business registry (but may be subject to mandatory registration with other public authorities, such as taxation and social security)[62] allows such businesses to benefit from a number of services offered by the State and by the registry, including the protection of a business or a trade name, facilitating access to credit, accessing additional opportunities for growth, improving visibility to the public and to markets and, subject to the legal form chosen for the business which may require it to be registered, the separation of personal assets from assets devoted to business or limiting the liability of the owner of the business. Businesses that voluntarily register with the business registry must, however, fulfil the same registration obligations (e.g. timely filing of periodic returns, updating of registered information, accuracy of information submitted) as those businesses that are required to register and will be subject to the same penalties for non-compliance.

131. States must also define which businesses are required to register under the applicable law. Laws requiring the registration of businesses vary greatly from State to State, but one common aspect is that they all require registration of a particular legal form of business. The nature of the legal forms of business that are required to register in a given jurisdiction is, of course, determined by the applicable law. In some legal traditions, it is common to require registration of all businesses, including sole proprietorships, professionals, and government bodies; in other legal traditions, only corporations and similar entities (with legal personality and limited liability) are

[62] In keeping with the views of the Working Group at its twenty-ninth session that the concepts of registration with the business registry and of operation of a business in the legal economy are not necessarily synonymous, the Secretariat has added the phrase "with the security)" to paragraph 130 (para. 129 of A/CN.9/WG.I/WP.106) (para. 22, A/CN.9/928).

required to register. This latter approach can exclude businesses like partnerships and sole proprietorships from mandatory registration. However, variations on these regimes also exist, and some jurisdictions permit voluntary registration for businesses that would not otherwise be required to register, such as sole traders and professional associations.

132. Even when business registration is voluntary, it may still prove burdensome for MSMEs and outweigh the benefits the business could gain as a registered business, thus discouraging registration. Some jurisdictions have carried out reforms to simplify the registration process by decreasing its cost (see paras. 202 to 204 and rec. 40 below) and by removing administrative obstacles. In any event, States should encourage micro and small businesses to register by adopting policies especially tailored to the needs of such businesses in order to convey to them the advantages of registration, including specific incentives available for MSMEs (see paras. 40 to 42 in document A/CN.9/WG.I/WP.110).[63]

Recommendation 20: Businesses permitted or required to register

The law should specify:

(a) That businesses of all sizes and legal forms are permitted to register;[64] and

(b) Which legal forms of businesses are required to register.

D. Minimum information required for registration

133. Businesses must meet certain information requirements in order to be registered; those requirements are determined by the State based on its laws and economic framework. The information required usually varies depending on the legal form of business being registered — for example, sole proprietorships and simplified business entities may be required to submit relatively simple details (if at all) in respect of their business, while businesses such as public and private limited liability companies will be required to provide more complex and detailed information. Although the requirements for registration of each legal form of business will vary according to the applicable law, there are, however, some requirements that can be said to be common for many businesses in most States, both during the initial registration process and throughout the lifecycle of the business.

134. General requirements for the registration of all legal forms of business are likely to include information in respect of the business and its registrant(s), such as:

(a) The name of the business;

(b) The address at which the business can be deemed to receive correspondence (such an address can be a "service address" and need not be the residential address of the registrants or the managers of the business);

(c) The name(s) and contact details of the registrant(s);

(d) The identity of the person or persons who are authorized to sign on behalf of the business or who serve as the business's legal representative(s); and

(e) The legal form of the business that is being registered and its unique identifier, if such an identifier has already been assigned (see paras. 112 and 113 above).[65]

[63] At its twenty-ninth session, the Working Group requested the Secretariat to emphasize that transaction costs and administrative requirements should not create obstacles for businesses that want to register (para. 66, A/CN.9/928).

[64] At its twenty-ninth session, the Working Group agreed to modify recommendation 20(a) (recommendation 19(a) in A/CN.9/WG.I/WP.108) to read: "that businesses of all sizes and legal forms are permitted to register, and" (para. 67, A/CN.9/928).

[65] The Secretariat has adjusted the text in keeping with suggestions made by the Working Group at its twenty-ninth session (para. 68, A/CN.9/928).

135. Other information that may be required for registration, depending on the jurisdiction of the registry and the legal form of the business being registered, can include:

(a) The names and addresses of the persons associated with the business, which may include managers, directors and officers of the business;

(b) The rules governing the organization or management of the business; and

(c) Information relating to the capitalization of the business. [66]

136. Business registries may request information on the gender identification, ethnicity or language group of the registrant and other persons associated with the business, but the provision of such information should not be a requirement for registration. It should be noted, however, that while such information can be statistically important, particularly in light of State programmes that may exist to support under-represented groups, its collection could raise privacy issues. Such information should thus be requested only on a voluntary basis, should be treated as protected data and made available, if at all, only on a statistical basis. [67]

137. Depending on the legal form of the business being registered, other details may be required in order to finalize the registration process. In some jurisdictions, proof of the share capital, information on the type of commercial activities engaged in by the business, and agreements in respect of non-cash property constitute information that may also be required in respect of certain legal forms of business. In addition, in several jurisdictions, registration of shareholder details and any changes therein may be required; in a few cases, registration of shareholder details is carried out by a different authority. States should, however, be mindful that requesting a prospective business to submit complex and extensive information may result in making registration more difficult and expensive and thus may discourage MSMEs from registering.

138. It should also be noted that in some jurisdictions, registration of the identity of the business owner(s) is considered a key requirement; other jurisdictions now make it a practice to register beneficial ownership details and changes in those details, although the business registry is not always the authority entrusted with this task.[68] Transparency in the beneficial ownership of businesses can help prevent the misuse of corporate vehicles, including MSMEs, for illicit purposes.[69]

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[66] As suggested by the Working Group at its twenty-ninth session, the Secretariat has removed redundancies in the commentary to recommendation 21 (recommendation 20 in A/CN.9/WG.I/WP.106) (para. 68, A/CN.9/928).

[67] Further to agreement by the Working Group at its twenty-ninth session on the importance of gathering disaggregated information in respect of the persons associated with the business, the Secretariat has drafted this paragraph (para. 69, A/CN.9/928).

[68] A "beneficial owner" is the natural person(s) who ultimately owns or controls a legal person or arrangement even when the ownership or control is exercised through a chain of ownership or by means of control other than direct control. These vehicles may include not only corporations, trusts, foundations, and limited partnerships, but also simplified business forms, and may involve the creation of a chain of cross-border company law vehicles created in order to conceal their ownership. See also paragraphs 47 to 55, A/CN.9/825.

[69] It should be noted that the Financial Action Task Force (FATF) Recommendation 24 in respect of transparency and beneficial ownership of legal persons encourages States to conduct comprehensive risk assessments of legal persons and to ensure that all companies are registered in a publicly available company registry. The basic information required is: (a) the company name; (b) proof of incorporation; (c) legal form and status; (d) the address of the registered office; (e) its basic regulating powers; and (f) a list of directors. In addition, companies are required to keep a record of their shareholders or members. (See International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations, Part E on Transparency and Beneficial Ownership of Legal Persons and Arrangements, Recommendation 24 (www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf).)

Recommendation 21: Minimum information required for registration

The law should establish the minimum information and supporting documents required for the registration of a business, including at least:

(a) The name of the business;

(b) The address at which the business can be deemed to receive correspondence or, in cases where the business does not have a standard form address, the precise description of the geographical location of the business;

(c) The identity of the registrant(s);

(d) The identity of the person or persons who are authorized to sign on behalf of the business or who serve as the business's legal representative(s); and

(e) The legal form of the business being registered and its unique identifier, if such an identifier has already been assigned.

E. Language in which information is to be submitted

139. When requiring the submission of information for business registration, one important issue for the State to consider is the language in which the required information must be submitted. Language can be a barrier and can cause delays in registration if documents need to be translated into the language of the registry. On the other hand, a business can be registered only if the content of the information is legible to the registry staff. For this reason, it is not common for jurisdictions to allow documents or electronic records to be submitted in a non-official language. States, however, may consider whether such documents can be accepted. There are some States that allow all or some of the information relating to the business registration to be submitted in a non-official language. Should States opt for this approach, they may wish to require that the documents or electronic records must be accompanied by a sworn translation into the registry's national language(s) or any other form of authenticating the documents or electronic records that is used in the State.

140. Another issue is whether the documents submitted to the business registry include information, such as names and addresses, that uses a set of characters different from the characters used in the language of the registry. In such a situation, the State should provide guidance on how the characters are to be adjusted or transliterated to conform to the language of the registry.

141. A number of States have more than one official language. In these States, registration systems are usually designed to accommodate registration in all official languages. To ensure that information on businesses operating in the State is available to all registrants and searchers, different approaches can be adopted. States may require parties to make their registration in all official languages; or they may permit filing in one language only, but then require the registry to prepare and register duplicate copies in all official languages. Both these approaches, however, may be costly and invite error. A more efficient method to deal with multiple official languages, any one of which may be used to register, would be to allow registrants to carry out registration in only one of those official languages. Such a language could be that of the province or the region where the registry office or the registry sub-office is located and where the registrant has its place of business. This approach would also take into account the financial constraints of MSMEs and additional circumstances, such as possible literacy issues, when entrepreneurs may not be equally fluent in all official languages spoken in a State. When such an approach is chosen, however, States should ensure that the registration and public information relating to the registry are available in all official languages of the registry. Whichever approach is taken, States will have to consider ways to address this matter so as to ensure that the registration and any subsequent change can be carried out in a cost effective way for both the registrant and the registry and, at the same time, ensure that information can be understood by the registry's users.

Recommendation 22: Language in which information is to be submitted

The law should provide that the information and documents submitted to the business registry must be expressed in the language or languages specified, and in the character set as determined and publicized by the business registry.

F. Notice of registration

142. The enacting State should establish that the business registry must notify the registrant whether or not the registration of the business was effective as soon as practicable, and, in any event, without undue delay. Obligating the registry to inform promptly the registrant of the registration helps to ensure the integrity and security of the registry record. In States where online registration is used, the registrant should receive an online notification of the registration of the business immediately after all of the requirements for the registration of that business have been successfully fulfilled.

Recommendation 23: Notice of registration

The law should establish that the business registry should notify the registrant whether or not the registration of its business is effective as soon as practicable, and, in any event, without undue delay.

G. Content of notice of registration

143. The notice of registration should include the minimum information in respect of the registered business necessary to provide conclusive evidence that all requirements for registration have been complied with and that the business is duly registered according to the law of the enacting State.

Recommendation 24: Content of notice of registration

The law should provide that the notice of registration may be in the form of a certificate, notice or card, and that it should contain at least the following information:

(a) The unique identifier of the business;

(b) The date of its registration;

(c) The name of the business;

(d) The legal form of the business; and

(e) The law under which the business has been registered.

H. Period of effectiveness of registration

144. States may adopt one of two approaches to determine the period of effectiveness of the registration of a business. In some States, the registration of the business is subject to a maximum period of duration established by law. It follows that unless the registration is renewed, the registration of the business will expire on the date stated in the notice of registration or upon the termination of the business.[70] This approach imposes a burden on the registered business, which could be particularly problematic for MSMEs, as they often operate with minimal staff and limited knowledge of the

[70] It should be noted that the general law of the enacting State for calculating time periods would apply to the calculation of the period of effectiveness, unless specific legal provisions applicable to registration provides otherwise. For example, if the general law of the enacting State provides that, if the applicable period is expressed in whole years from the day of registration, the year runs from the beginning of that day.

applicable rules. Further, if additional information is required and not furnished by the business, renewal of its registration could also be refused.

145. Under the second approach, no maximum period of validity is established for the registered business and the registration is effective until the business ceases to operate and is deregistered. This approach simplifies the intake process and both encourages registration and reduces its burden on all businesses. However, States that opt for this approach should ensure the adoption of appropriate methods (e.g. sending regular prompts to businesses, establishing advertising campaigns as reminders, or, as a last resort, enforcement procedures) to encourage businesses to keep their registered information current (see paras. 163 to 167 and rec. 30 below).

146. In some cases, both approaches have been adopted: a maximum period of registration, subject to renewal, may apply to registered businesses that are of a legal form that does not have legal personality, while an unlimited period of registration may apply to businesses that have legal personality. This duality of approach reflects the fact that the consequences of the expiry of registration of a business that possesses legal personality are likely to be more serious and may affect the very existence of the business and the limited liability protection afforded its owners.

147. Although some jurisdictions require registered businesses to renew their registration periodically, the practice of establishing registration without a maximum period of validity is a more desirable approach as it meets the needs of businesses for simplified and fast procedures, while relieving them, in particular MSMEs, of a potential burden.

Recommendation 25: Period of effectiveness of registration

The law should establish that the registration is valid until the business is deregistered.

I. Time and effectiveness of registration

148. In the interests of transparency and predictability of a business registration system, States should determine the moment at which the registration of a business or any later change made to the registered information is effective. States usually determine that a business registration or any subsequent change made to it is effective either at the time of the entry of that information into the registry record or when the application for registration (or a change to that information) is received by the registry. Whichever approach is chosen, the most important factor is that the State makes it clear at which moment the registration or change is effective. In addition, the effective time of registration of the business or any later change to the registered information should be indicated in the registry record relating to the relevant business.

149. In some jurisdictions, businesses may also apply for the protection of certain rights in the period prior to registration. For example, the provisional registration of the trade name of the business to be registered may protect that name from being used by any other entity until the registration of the business is effective. In such cases, States should be equally clear to establish the moment at which such pre-registration rights are effective and the period of their effectiveness.[71]

150. If the registry is designed to enable users to submit or amend registered information electronically without the intervention of registry staff and to use online payment methods for the registration, the registry software should ensure that the information becomes effective immediately or nearly immediately after it is transmitted. As a result, any delay between the time of the electronic transmission of the information and the effective time of registration of the business will be eliminated.

[71] At its twenty-ninth session, the Working Group agreed to move the substance of footnote 162 of A/CN.9/WG.I/WP.106 into the commentary (para. 74, A/CN.9/928).

151. In registry systems in which the registry staff must enter the information into the registry record (whether it is received electronically or in paper form), there will inevitably be some delay between the time when the information is received in the registry office and the time when the information is entered into the registry record. In these cases, the law should provide that the registry must enter the information received into the registry record as soon as practicable and possibly set a deadline by which that entry should be completed. In a mixed registry system which allows information to be submitted in both electronic and paper form, registrants who elect to use the paper form should be alerted that this method may result in some delay in the time of effectiveness of the registration. Finally, a business registry usually processes applications for registration in the order in which they have been received, although some jurisdictions may permit expedited processing of applications, subject to the payment of an additional fee.[72]

Recommendation 26: Time and effectiveness of registration

The law should:

(a) Require the business registry to record the date and time that applications for registration are received and to process them in that order as soon as practicable and, in any event, without undue delay;

(b) Establish clearly the moment at which the registration of the business is effective; and

(c) Specify that the registration of the business must be entered into the business registry as soon as practicable thereafter, and in any event without undue delay.

J. Rejection of an application for registration

1. Rejection due to errors in the application for registration

152. A series of checks and control procedures are required to ensure that the necessary information is provided in order to register the business, however, the extent of such controls varies according to the jurisdiction. In those legal regimes where the registry performs simple control procedures, if all of the basic legal and administrative requirements established by applicable law are met, the registrar must accept the information as filed, record it, and register the business. When the legal regime requires a more thorough verification of the information filed, registries may have to check whether mandatory provisions of the law are met by the content of the application and information submitted, or by any amendments thereto. Whichever approach is chosen, States should define in their law which requirements the information to be submitted to the registry must meet. In certain jurisdictions, the registrar is given the authority to impose requirements as to the form, authentication and manner of delivery of information to be submitted to the registry. When an MSME is seeking to register, such requirements should be kept to a minimum in order to facilitate the registration process for MSMEs. This will reduce administrative hurdles and help in promoting business registration among such businesses.

153. Registration of MSMEs may also be facilitated if the registrar is granted the power to accept and register documents that do not fully comply with the requirements for the form of the submission, and to rectify clerical errors, including its own incidental errors, in order to bring the entry in the business registry into conformity with the documents submitted by the registrant. This will avoid imposing the potentially costly and time-consuming burden of requiring the registrant to resubmit its application for registration. Entrusting the registrar with these

[72] The Secretariat has added a sentence at the end of the paragraph further to a request of the Working Group at its twenty-ninth session that the commentary should include a reference to States that permitted the processing of expedited registration subject to the payment of an additional fee (para. 74, A/CN.9/928).

responsibilities may be particularly important if registrants do not have direct access to electronic submission of documents and where such submission, or the entry of data, requires the intervention of the registry staff. In States where it is possible for registrants to submit applications for registration directly online, the electronic registration system usually provides automated scrutiny of the data entered in the application. When the registrar is granted the authority to correct its own errors as well as any incidental errors that may appear in the information submitted in support of the registration of the business, the law of the enacting State should strictly determine under which conditions those responsibilities may be discharged (see also para. 233 and 234 and rec. 52 below). Clear rules in this regard will ensure the integrity and security of the registry record and minimize any risk of abuse from or corruption by the registry staff (see also paras. 214 to 219 and rec. 46 below). The law of the enacting State should thus establish that the registry may only exercise its discretion to correct errors upon having provided prior notification of the intended corrections to the registrant and having received the consent of the registrant in return, although this approach could create a delay in the registration of the business while the registrar seeks such consent. When the information provided by the business is not sufficient to comply with the requirements for registration, the registrar should be granted the authority to request from the business additional information in order to finalize the registration process. The law of the enacting State should specify an appropriate length of time within which the registrar should make such a request.

154. The rejection of an application for registration is likely to be processed differently depending on whether the registration system is electronic, paper-based, or mixed. In a registry system that allows registrants to submit applications and relevant information directly to the registry electronically, the system should be designed, when permitted by the State's technological infrastructure, so as to automatically require correction of the application if it is submitted with an error, and to automatically reject the submission of incomplete or illegible applications, displaying the reasons for the rejection on the registrant's screen. In cases where the application for registration of a business is submitted in paper form and the reason for its rejection is that the application was incomplete or illegible, there might be some delay between the time of receipt of the application by the registry and the time of communication of its rejection, and the reasons therefor, to the registrant. In mixed registry systems which allow applications to be submitted using both paper and electronic means, the design of the electronic medium should include the technical specifications that allow for automatic requests for correction or automatic rejection of an application. Moreover, registrants who elect to use the paper form when such a choice is possible should be alerted that this method may result in some delay between the time of receipt of the application by the registry and the time of communication of any rejection, and the reasons therefor.

2. Rejection of an application for failure to meet the requirements prescribed by law

155. States should provide that registries may reject the registration of a business if its application does not meet the requirements prescribed by the applicable law of the State.[73] This approach is implemented in several jurisdictions regardless of their legal tradition. In order to prevent any arbitrary use of such power, however, the registrar must provide, in writing, a notice of the rejection of an application for registration and the reasons for which it was rejected, and the registrant must be allowed time to appeal against that decision as well as to resubmit its application. Moreover, it should be noted that the authority of the registrar to reject an application should be limited to situations where the application for registration does not meet the conditions for registration as required by law. The registrar should not have the authority over the

[73] Instances in which the registry improperly accepts an application and registers a business that does not meet the requirements prescribed by law should be governed by the provisions establishing liability of the business registry, if any (see paras. 214 to 219 below). Moreover, the law of the State should establish how rectification of business registration should be carried out in such instances.

substantive grounds for the establishment of a particular legal form of business; such matters should be governed by the law of the enacting State.[74]

Recommendation 27: Rejection of an application for registration

The law should provide that the registrar:

(a) Must reject an application for the registration of a business if the application does not meet the requirements specified in the law;

(b) Is required to provide to the registrant in written form the reason for any such rejection;

(c) Is granted the authority to correct its own errors as well as any incidental errors that may appear in the information submitted in support of the registration of the business, provided that the conditions under which the registrar may exercise this authority are clearly established; and

(d) Is not authorized to reject an application for registration based on substantive grounds.[75]

K. Registration of branches

156. Registration of branches of a business is a common practice, although there are jurisdictions in which such registration is not required.[76] Most States require the registration of national branches of a foreign business in order to permit those branches to operate in their jurisdiction and to ensure the protection of domestic creditors, businesses and other interested parties that deal with those branches. In several States, registration of a branch of a business established in another domestic jurisdiction is also required or permitted. Registration of a business branch might not appear to be immediately relevant for MSMEs, whose main concern is more likely to be to consolidate their business without exceeding their human and financial capacity. However, this issue is relevant for those slightly larger businesses that, being of a certain size and having progressed to a certain volume of business, look to expand beyond their local or domestic market. In addition, even micro and very small businesses may be highly successful and may wish to expand their operations. For such businesses, establishing branches in a new location either within or outside the jurisdiction in which they were formed may be both an attractive goal and a realistic option. Although it may seem to be a daunting prospect, in fact, when a business expands, it may find that setting up a branch is cheaper and requires fewer formalities than establishing a subsidiary. This is usually the case even when cross-border branches are established.

157. States have their own rules for governing the operation of foreign businesses, and there may be considerable differences among those States that permit the registration of branches of foreign businesses in terms of what triggers the obligation

[74] At its twenty-ninth session, the Working Group requested the Secretariat to move paragraphs 152, 153 and any reference in paragraph 154 (paras. 149, 150 and 152 of A/CN.9/WG.I/WP.106) to the processing of registration forms in the commentary before recommendation 21 (recommendation 20 in A/CN.9/WG.I/WP.106). However, upon review it is suggested that those paragraphs remain in Section J of the guide for consistency with recommendation 27 (recommendation 26 in A/CN.9/WG.I/WP.106) and in accordance with previous decisions of the Working Group at its twenty-eighth session (para. 93, A/CN.9/900). The Secretariat has thus streamlined Section J by grouping paragraphs 152, 153 and 154 under subsection "1. Rejection due to errors in the application for registration" and relocated paragraph 155 (para. 151 of A/CN.9/WG.I/WP.106) under subsection "2. Rejection of an application for failure to meet the requirements prescribed by law" (para. 75, A/CN.9/928).

[75] Further to a request of the Working Group at its twenty-ninth session, the Secretariat has: (a) deleted the term "objective" in recommendation 27(a) (recommendation 26(a) in A/CN.9/WG.I/WP.106); and (b) added a subparagraph (d) (para. 76, A/CN.9/928).

[76] At its twenty-ninth session, the Working Group requested the Secretariat to consider clarifying that in some jurisdictions, branches were not required to register (para. 77, A/CN.9/928).

to register them. Some approaches are based on a broad interpretation of the concept of foreign establishment, for example, those that include not only a branch, but also any establishments with a certain degree of permanence or recognizability, such as a place of business in the foreign State. Other approaches define more precisely the elements that constitute a branch which needs to be registered, possibly including the presence of some sort of management, the maintenance of an independent bank account, the relation between the branch and the original or main business, or the requirement that the original or main business has its main office registered abroad. Not all States define a branch in their laws, or state under which circumstances a foreign establishment in the State must be registered: laws may simply refer to the existence of a foreign branch. In these cases, registries may fill the gap by issuing guidelines that clarify the conditions under which such a registration should be carried out. When this occurs, the registration guidelines should not be seen as an attempt to legislate by providing a discrete definition of what constitutes a branch, but rather as a tool to explain the features required by a branch of a business in order to be registered.

158. When simplifying or establishing their business registration system, States should consider enacting provisions governing the registration of branches of businesses from other jurisdictions. Those provisions should address, at minimum, issues such as timing of registration, disclosure requirements, information on the persons who can legally represent the branch and the language in which the registration documents should be submitted. Duplication of names could represent a major issue when registering foreign company branches, and it is important to ensure that the identity of a business is consistent in different jurisdictions. In this regard, an optimal approach could be for a business registry to use unique identifiers to ensure that the identity of a business remains consistent and clear within and across jurisdictions (see paras. 104 to 111 above).

Recommendation 28: Registration of branches

The law should establish:

(a) Whether the registration of a branch of a business is required or permitted;

(b) A definition of "branch" for registration purposes that is consistent with the definition provided elsewhere in the law; and

(c) Provisions regarding the registration of a branch to address the following issues:

(i) When a branch must be registered;

(ii) Disclosure requirements, including: the name and address of the registrants; the name and address of the branch; the legal form of the original or main business seeking to register a branch; and current proof of the existence of the original or main business issued by a competent authority of the State or other jurisdiction in which that business is registered; and

(iii) Information on the person or persons who can legally represent the branch.

V. Post-registration

159. While a key function of a business registry is, of course, the registration of a business, registries typically support businesses throughout their life cycle. Once a business's registered information is collected and properly recorded in the business registry, it is imperative that it be kept current in order for it to continue to be of value to users of the registry. Both the registered business and the registry play roles in meeting these goals.

160. In order for a business to remain registered, it must submit certain information during the course of its life, either periodically or when changes in its registered information occur, so that the registry is able to maintain the information on that

business in as current a state as possible. The registry also plays a role in ensuring that its information is kept as current as possible, and may use various means to do so, such as those explored in greater detail below. Both of these functions permit the registry to provide accurate 'business information to its users, thus ensuring transparency and supplying interested parties, including potential business partners and sources of finance, the public and the State, with a trustworthy source of information.

A. Information required after registration

161. In many jurisdictions, entrepreneurs have a legal obligation to inform the registry of any changes occurring in the business, whether these are factual changes (for example, address or telephone number) or whether they pertain to the structure of the business (for example, a change in the legal form of business). Information exchange between business registries and different government authorities operating in the same jurisdiction serves the same purpose. In some cases, business registries publish annual accounts, financial statements or periodic returns of businesses that are useful sources of information in that jurisdiction for investors, business clients, potential creditors and government authorities. Although the submission and publication of detailed financial statements might be appropriate for public companies, depending on their legal form, MSMEs should be required to submit far less detailed financial information, if any at all, and such information should only be submitted to the business registry and made public if desired by the MSME. However, to promote accountability and transparency and to improve their access to credit or attract investment, MSMEs may wish to submit and make public their financial information.[77] In order to encourage MSMEs to do so, States should allow MSMEs to decide on an annual basis whether to opt for disclosure of such information or not.

162. The submission of information that a business is required to provide in order to remain registered may be prompted by periodic returns that are required by the registry at regular intervals in order to keep the information in the registry current or it may be submitted by the business as changes to its registered information occur. Information required in this regard may include:

(a) Amendments to any of the information that was initially or subsequently required for the registration of the business as set out in recommendation 21;

(b) Changes in the name(s) and address(es) of the person(s) associated with the business;

(c) Financial information in respect of the business, depending on its legal form; and

(d) Information concerning insolvency proceedings, liquidation or mergers (see para. 64 above).

[77] While MSMEs are not generally required to provide the same flow and rate of information as publicly held firms generally, they may have strong incentives for doing so, particularly as they develop and progress. Businesses wishing to improve their access to credit or to attract investment may wish to signal their accountability by supplying information on: (1) the business' objectives, (2) principal changes, (3) balance sheet and off-balance sheet items, (4) its financial position and capital needs, (5) the composition of any management board and its policy for appointments and remuneration, (6) forward-looking expectations, and (7) profits and dividends. Such considerations are not likely to trouble MSMEs while they remain small, but could be important for such businesses as they grow.

Recommendation 29: Information required after registration

The law should specify that after registration, the registered business must file with the business registry at least the following information:

(a) Any changes or amendments to the information that was initially required for the registration of the business pursuant to recommendation 21;[78] and

(b) Periodic returns, as required, which may include annual accounts.

B. Maintaining a current registry

163. States should enact provisions that enable the business registry to keep its information as current as possible. A common approach through which that may be accomplished is for the State to require registered businesses to file at regular intervals, for example once a year, a declaration stating that certain core information contained in the register concerning the business is accurate or stating what changes should be made. Although this approach may be valuable as a means of identifying businesses that have permanently ceased to operate and may be deregistered, and may not be burdensome for larger business with sufficient human resources, such a requirement could be quite demanding for MSMEs, in particular if there is an associated cost.

164. Another approach, which seems preferable in the case of MSMEs, is to require the business to update its information in the registry whenever a change in any of the registered information occurs. The risk of this approach, which is largely dependent on the business complying with the rules, may be that the filing of changes is delayed or does not occur. To prevent this, States could adopt a system pursuant to which regular prompts are sent, usually electronically, to businesses to request them to ensure that their registered information is current. In order to minimize the burden for registries and to help them make the most effective use of their resources, prompts that registries regularly send out to remind businesses to submit their periodic returns could also include generic reminders to update registered information. If the registry is operated in a paper-based or mixed format, the registry should identify the best means of performing this task, since sending paper-based prompts to individual businesses would be time and resource consuming and may not be a sustainable approach. In one State, where the registry is not operated electronically, reminders to businesses to update their registered information are routinely published in newspapers.

165. Regardless of the approach chosen to prompt businesses to inform the registry of any changes in their registered information, States may adopt enforcement measures for businesses that fail to meet their obligations to file amendments. For example, a State could adopt provisions establishing the liability of the registered business to a fine on conviction if changes are not filed with the business registry within the time prescribed by law (see paras. 212 to 213 and rec. 45 below).

166. A more general method that may help mitigate any potential deterioration of the information collected in the business registry would include enhancing the interconnectivity and the exchange of information between business registries and taxation and social security authorities as well as other public authorities. The adoption of integrated electronic interfaces among the authorities involved in the business registration process allowing for their technical interoperability and the use of unique identifiers could play a key role (see paras. 100 and 101 and 104 to 111

[78] Further to a decision of the Working Group at its twenty-ninth session, the Secretariat has deleted the portion of recommendation 29(a) (recommendation 28(a) in A/CN.9/WG.I/WP.106) after the phrase "recommendation 21" (recommendation 20 in A/CN.9/WG.I/WP.106) ("or to the ... changes occur") and has reflected the concept deleted in subparagraph 162(a) (para. 159(a) of A/CN.9/WG.I/WP.106) (para. 79, A/CN.9/928).

above). Moreover, the registrar could identify sources of information on the registered business that would assist in maintaining a current registry record.[79]

167. Once the registry has received the updated information, it should ensure that all amendments are entered in the registry record without undue delay. Again, the form in which the registry is operated is likely to dictate what might constitute an undue delay. If the registry allows users to submit information electronically without the intervention of the registry staff, the registry software should permit the amendments to become immediately or nearly immediately effective. Where the registry system (whether electronic, paper-based or mixed) requires the registry staff to enter the information on behalf of the business, all amendments should be reflected in the registry as soon as possible, and a maximum time period in which that should be accomplished could be stipulated.

Recommendation 30: Maintaining a current registry[80]

The law should require the registrar to ensure that the information in the business registry is kept current, including through:

(a) Sending an automated request to registered businesses to prompt them to report whether the information maintained in the registry continues to be accurate or to state which changes should be made;

(b) Displaying notices of the required updates in the registry office and sub-offices and routinely publishing reminders on the registry website and social media and in national and local electronic and print media;

(c) Identification of sources of information on the registered businesses that would assist in maintaining the currency of the registry; and

(d) Updating the registry as soon as practicable following the receipt of amendments to registered information and, in any event, without undue delay thereafter.

C. Making amendments to registered information

168. States should also determine the time at which changes to the registered information are effective in order to promote transparency and predictability of the business registration system. Changes should become effective when the information contained in the notification of amendments is entered into the registry record rather than when the information is received by the registry, and the time of the change should be indicated in the registry record of the relevant business. In order to preserve information on the history of the business, amendments to previously registered information should be added to the registry record without deleting previously entered information.

169. As in the case of business registration, if the registry allows users to submit amendments electronically without the intervention of the registry staff, the amendments should become effective immediately or nearly immediately after they are transmitted. If the registry staff must enter the amendments into the registry on behalf of the business, amendments received should be entered into the registry record as soon as practicable, possibly within a maximum time. In a mixed registry system that allows amendments to be submitted using both paper and electronic means,

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[79] The final sentence has been added to reflect the view of the Working Group at its twenty-ninth session that there should be an onus on the registrar to proactively identify sources of information to keep the registry up to date (para. 80, A/CN.9/928).

[80] In keeping with the deliberations of the Working Group at its twenty-ninth session that recommendation 30(a) (recommendation 29(a) in A/CN.9/WG.I/WP.106) should be adjusted to reflect additional best practices to keep registered information current, the Secretariat has added subparagraphs (b) and (c) to the recommendation (para. 80, A/CN.9/928).

registrants who elect to use the paper form should be alerted that this method may result in some delay in the effectiveness of the amendments.

Recommendation 31: Making amendments to registered information

The law should:

(a) Require the business registry to: (i) process amendments to the registered information in the order in which they are received; (ii) record the date and time when the amendments are entered into the registry record; and (iii) notify the registered business as soon as practicable and in any event, without undue delay, that its registered information has been amended; and

(b) Establish when an amendment to the registered information is effective.

VI. Accessibility and information-sharing

A. Access to business registry services[81]

170. The law should permit all potential registrants to access business registry services without discrimination based on grounds such as sex, race, ethnic or social origin, religion, belief, or political view. In the interest of promoting domestic economic growth, an increasing number of States allow registrants who are neither citizens of, nor residents in, the State to register a business, provided that such registrants meet certain requirements and comply with certain procedures established by the law concerning foreign registrants.

171. Access of potential registrants to the services of the business registry should only be subject to compliance with minimum age requirements, and with procedural requirements for the use of such services, such as: that the request for registration be submitted via an authorized medium of communication and on the prescribed form; and that the registrant provide identification in the form requested by the registry (see paras. 134 and 135 above and rec. 21) and pay any fee required for registration (see paras. 200 and 202 to 204 and rec. 40 below).[82]

172. The registry should maintain a record of the identity of the registrant. In order to ensure a simple and straightforward registration process, the evidence of identity required of a registrant should be that which is generally accepted as sufficient in day-to-day commercial transactions in the enacting State. When registries are operated electronically and allow for direct access by users, potential registrants should be given the option of setting up a protected user account with the registry in order to transmit information to the registry. This would facilitate access by frequent users of registration services (such as business registration intermediaries or agents), since they would need to provide the required evidence of their identity only when initially setting up the account.[83]

173. Once the registrant has complied with the requirements mentioned in paragraph 171 above (and any others established by the law of the State) for accessing the registry, the registry cannot deny access to the registry services. The only scrutiny that the registry may conduct at this stage (which is carried out automatically in an electronic registry) is to ensure that legible information (even if incomplete or incorrect) is entered in the form for business registration. If the registrant did not meet the objective conditions for access to the registration services, the registry should provide the reasons for denying access (e.g. the registrant failed to provide valid identification) in order to enable the registrant to address the problem. The registry

[81] At its twenty-ninth session, the Working Group agreed to delete the word "public" from the title of the section and of recommendation 32 (recommendation 31 in A/CN.9/WG.I/WP.106) (para. 82, A/CN.9/928).

[82] This approach is consistent with the approach adopted in the UNCITRAL Guide on the Implementation of a Security Rights Registry at paragraphs 95 to 99.

[83] Ibid.

should provide such reasons as soon as practicable (in this respect see paras. 153 to 155 and rec. 27 above).[84]

174. Certain rules relating to access to business registry services may also be addressed in the "terms and conditions of use" established by the registry. These may include offering the user the opportunity to open an account to facilitate quick access to registry services and any necessary payment of fees for those services. The terms and conditions of access may also address the concerns of registrants regarding the security and confidentiality of their financial and other information or the risk of changes being made to registered information without the authority of the business. Assigning a unique user name and a password to the registrant, or employing other modern security techniques would help reduce such risks, as would requiring the registry to notify the business of any changes made by others in the user account information.

Recommendation 32: Access to business registry services

The law should permit any qualified person to access the services of the business registry.

B. Public availability of information

175. In keeping with its functions as a collector and disseminator of business-related information, the registry should make available all public information on a registered business that is relevant for those that interact with the business (whether they be public authorities or private entities) to be fully aware of the business identity and status of that business. This may[85] allow interested users to make more informed decisions about who they wish to do business with, and for organizations and other stakeholders to gather business intelligence. Moreover, since access to the publicly available registered information by general users also enhances certainty of and transparency in the way the registry operates, the principle of public access to the information deposited in the registry should be stated in the law of the enacting State. In most States, public access to the information in the registry is generally unqualified, and allowing full public access does not compromise the confidentiality of certain registered information, which can be protected by allowing users to access only certain types of information. For these reasons, it is recommended that the registry should be fully accessible to the public, subject only to necessary confidentiality restrictions in respect of certain registered information.

176. While providing disclosure of the publicly available registered information is an approach followed in most States, the way in which users access information, the format in which the information is presented and the type of information available varies greatly from State to State. This variation is not only a function of the technological development of a State, but of the framework for accessing such information, for example, in respect of different criteria that may be used to search the registry.

177. It is not recommended that States restrict access to search the information on the business registry or that users be required to demonstrate a reason to request access. Such a policy could seriously compromise the core function of the registry to publish and disseminate information on registered businesses. Moreover, if a discretionary element is injected into the granting of an information request, equal public access to the information in the registry could be impaired, and some potential users might not have access to information that was available to others.

178. Access to the business registry can be made subject to certain procedural requirements, such as requiring users to submit their information request in a

[84] Ibid

[85] At its twenty-ninth session, the Working Group agreed to replace the term "will" with "may" (para. 83, A/CN.9/928)

prescribed form and to pay any prescribed fee. If a user does not use the prescribed registry form or pay the necessary fee, the user may be refused access to search the registry. As in the case of refusing access to registration services, the registry should be obliged to give the specific reason for refusing access to information services as soon as practicable so that the user can remedy the problem.

179. Unlike the approach adopted for registrants, the registry should not request and maintain evidence of the identity of a user as a precondition to obtaining access to the information on the business registry, since a user is merely retrieving information contained in the public registry record. Identification should be requested of users only if it is necessary for the purposes of collecting any fees applicable to the retrieval of such information.

180. The registry may also reject an information request if the user does not enter a search criterion in a legible manner in the designated field but the registry should provide the grounds for any rejection as soon as practicable, as in the case of non-compliance with the objective conditions for registration by registrants (see paras. 173 and 174 above). In registry systems that allow users to submit information requests electronically to the registry, the software should be designed to prevent automatically the submission of information requests that do not include a legible search criterion in the designated field and to display the reasons for refusal on the user's screen.

181. Further, in order to facilitate dissemination of the information, States should be encouraged to abolish or keep to a minimum fees charged to access basic information on registered businesses (see para. 205 below). This approach may be greatly facilitated by the development of electronic registries that allow users to submit requests or make searches electronically without the need to rely on intermediation by registry personnel. Such an approach is also much cheaper for the registry. Where registration systems are paper-based, users may be required to either visit the registry office and conduct the search on site (whether manually or using ICT facilities that are available) or have information sent to them on paper. In both cases, registry staff may need to assist the user to locate the information and prepare it for disclosure. Again, paper-based information access is associated with delay, higher costs, the potential for error, and the possibility that the information obtained is less current.

182. Finally, States should devise effective means to encourage the use of information services provided by the registry. The adoption of electronic registries that allow direct and continuous access for users (except for periods of scheduled maintenance) will promote the actual use of the information. Communication campaigns on the services available from the business registry will also contribute to the active take-up of information services.

Recommendation 33: Public availability of information

The law should specify that all registered information is fully and readily[*] available to the public unless it is protected under the applicable law.

C. Where information is not made public

183. Access to the business registry should be granted to all interested entities and to the public at large. In order to maintain the integrity and reputation of the registry as a trusted collector of information that has public relevance, access to sensitive information should be controlled to avoid any breach of confidentiality. States should thus put in place proper disclosure procedures. They may do so by adopting provisions that list which information is not available for public disclosure or they may follow

[*] At its twenty-ninth session, the Working Group agreed to include the phrase "fully and readily" before the word "available" in recommendation 33 (recommendation 32 in A/CN.9/WG.I/WP.108) (para. 83, A/CN.9/928).

the opposite approach and adopt provisions that list the information that is publicly accessible, indicating that information that is not listed cannot be disclosed.

184. Legislation in each State often includes provisions on data protection and privacy. When establishing a registry, in particular an electronic registry, States must consider issues concerning the treatment of protected data that is included in the application for registration and its protection, storage and use. Appropriate legislation should be in place to ensure that such data are protected, including rules on how it may be shared between different public authorities (see para. 120 and rec. 18 above). States should also be mindful that a major trend towards increased transparency in order to avoid the misuse of corporate vehicles for illicit purposes has resulted from international efforts to fight money-laundering, terrorist, and other illicit activities.[87] States should thus adopt a balanced approach that achieves both transparency and the need to protect access to sensitive information maintained in the registry.

Recommendation 34: Where information is not made public

In cases where information in the business registry is not made public, the law should:

(a) Establish which information concerning the registered business is subject to the applicable law on public disclosure of protected data and require the registrar to publicize the types of information that cannot be publicly disclosed pursuant to that law;[88] and

(b) Specify the circumstances in which the registrar may use or disclose information that is subject to confidentiality restrictions.

D. Hours of operation

185. Establishing the operating days and hours of the business registry depends on whether the registry is designed to allow direct electronic registration and information access by users or whether it requires their physical presence at an office of the registry. In the former case, electronic access should be available continuously except for brief periods to undertake scheduled maintenance; in the latter case, registry offices should operate during dependable and consistent hours that are compatible with the needs of potential registry users. In view of the importance of ensuring ease of access to registry services for users, the above criteria[89] should be incorporated in the law of the enacting State or in administrative guidelines published by the registry, and the registry should ensure that its operating days and hours are widely publicized.

186. If the registry provides services through a physical office, the minimum hours and days of operation should be the normal business days and hours of public offices in the State. To the extent that the registry requires or permits paper-based submissions, the registry should aim to ensure that the paper-based information is entered into the registry record and made available as soon as practicable, but preferably on the same business day that the information is received by the registry. Information requests submitted in paper form should likewise be processed on the same day they are received. To achieve this goal, the deadline for submitting paper-based information requests may be set independently from the business hours

[87] See supra, note 69 for additional information in respect of FATF Recommendation 24.

[88] At its twenty-ninth session, the Working Group requested the Secretariat to clarify that the registrar should only publicize, and may not decide, the types of information that cannot be publicly disclosed according to the applicable law (para. 84, A/CN.9/928).

[89] At its twenty-ninth session, the Working Group agreed that the phrase "these recommendations" in the final sentence of paragraph 185 (para. 182 of A/CN.9/WG.I/WP.106) should be changed to text along the lines of "the requirements above" (para. 85, A/CN.9/928).

of the registry office.[90] Alternatively, the business registry could continue to receive paper submissions and information requests throughout its business hours, but set a "cut off" time after which information received may not be entered into the registry record, or information searches performed, until the next business day. A third approach would be for the registry to undertake that information will be entered into the registry record and searches for information will be performed within a stated number of business hours after receipt of the application or information request.

187. The law could also enumerate, in either an exhaustive or an indicative way, the circumstances under which access to registry services may temporarily be suspended. An exhaustive list would provide more certainty, but there is a risk that it might not cover all possible circumstances. An indicative list would provide more flexibility but less certainty. Circumstances justifying a suspension of registry services would include any event that makes it impossible or impractical to provide those services (for example, due to force majeure such as fire, flood, earthquake or war, or to a breakdown in the Internet or network connection).

Recommendation 35: Hours of operation

The law should ensure that:

(a) If access to the services of the business registry is provided electronically, access is available at all times;

(b) If access to the services of the business registry is provided through a physical office:

(i) Each office of the registry is open to the public during [*the days and hours to be specified by the enacting State*]; and

(ii) Information about any registry office locations and their opening days and hours is publicized on the registry's website, if any, or otherwise widely publicized, and the opening days and hours of registry offices are posted at each office; and

(c) Notwithstanding subparagraphs (a) and (b) of this recommendation, the business registry may suspend access to the services of the registry in whole or in part in order to perform maintenance or provide repair services to the registry, provided that:

(i) The period of suspension of the registration services is as short as practicable;

(ii) Notification of the suspension and its expected duration is widely publicized; and

(iii) Such notice should be provided in advance and, if not feasible, as soon after the suspension as is reasonably practicable.

E. Direct electronic access to submit registration, to request amendments and to search the registry

188. If the State opts to implement an electronic registration system, the registry should be designed, if possible, to allow registry users to submit directly and to conduct searches from any electronic device,[91] as well as from computer facilities made available to the public at sub-offices of the registry or other locations. To further

[90] For example, the law or administrative guidelines of the registry could stipulate that, while the registry office is open between 9 a.m. and 5 p.m., all applications, changes and search requests must be received by an earlier time (for example, by 4 p.m.) to ensure that the registry staff has sufficient time to enter the information included in the application into the registry record or conduct the searches.

[91] In keeping with a decision of the Working Group at its twenty-ninth session, the Secretariat has replaced the term "private computer" (para. 86, A/CN.9/928).

facilitate access to business registry services, the registry conditions of use may allow intermediaries (for example, lawyers, notaries or private sector third-party service providers) to carry out registration and information searches on behalf of their clients when the applicable law allows or requires the involvement of such intermediaries. If accommodated by the technological infrastructure of the State, or at a later stage of the reform, States should also consider adopting systems that allow registration, the filing of amendments and searches of the registry to be carried out through the use of mobile technology. This solution may be particularly appropriate for MSMEs in those economies where mobile services are often easier to access than electronic services.

189. When the registry allows for direct electronic access, the registry user (including an intermediary) bears the burden of ensuring the accuracy of any request for registration or amendment, or of any search of the registry. Since the required digital forms are completed by registry users without assistance from the registry staff, the potential for alteration of those forms by the registry staff is greatly minimized, as their duties are essentially limited to managing and facilitating electronic access by users, processing any fees, overseeing the operation and maintenance of the registry system and gathering statistical data. Even when direct electronic access is allowed, however, the possibility of error or misconduct on the part of the registry staff may exist if the registry staff is still required to intervene and enter information submitted to it electronically into the business registry record (see also para. 215 below).[92]

190. Direct electronic access significantly reduces the costs of operation and maintenance of the system, increases accessibility to the registry (including when registration or searches are carried out through intermediaries) and enhances the efficiency of the registration process by eliminating any time lag between the submission of information to the registry and the actual entry of that information into the record. In some States, electronic access (from the premises of a registrant or a business, or from a branch office of the registry) is the only available mode of access for both registration and information searches. In fact, in many States, where the registration system is both electronic and paper-based, electronic submission is by far the most prevalent mode of data submission.

191. It is thus recommended that, to the extent possible, States should establish a business registration system that is computerized and that permits direct electronic access by registry users. Given the practical considerations involved in establishing an electronic registry, multiple modes of access should be made available to registry users at least in the early stages of implementation in order to reassure those who are unfamiliar with the system. To facilitate its use, the registry should be organized to provide for multiple points of access for both electronic and paper submissions and information requests. However, even where States continue to use paper-based registries, the overall objective is the same: that is, to make the registration and information retrieval process as simple, transparent, efficient, inexpensive and publicly accessible as possible.

Recommendation 36: Direct electronic access to submit registration and to request amendments[93]

The law should establish that, in keeping with other applicable law of the enacting State, where information and communications technology is available, the submission of applications for the registration of a business and requests for amendment of the registered information of a business are permitted without requiring the physical presence of the registrant or user in the business registry office.

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[92] The Secretariat has adjusted this paragraph in light of the request of the Working Group at its twenty-ninth session that the focus of paragraph 189 (para. 186 of A/CN.9/WG.I/WP.106) should be on the electronic submission of information and not the entry of data in the registry record (para. 86, A/CN.9/928).

[93] At its twenty-ninth session, the Working Group agreed to delete the phrase "and search the registry" from the title of the recommendation and the phrase "or assistance of the registry staff" after the term "registry office" at the end of the recommendation (para. 86, A/CN.9/928).

Recommendation 37: Direct electronic access to search the registry

The law should establish that, where information and communications technology is available, searches of the registry are permitted without requiring the physical presence of the user in the business registry office or the intermediation of the registry staff.

F. Facilitating access to information

1. Type of information provided

192. Information can be of particular value to users if it is available to the public, although the type of registered information that is available will depend on the legal form of the business being searched and on the applicable law regarding what registered information is protected and what may be made available to the public. Valuable information on a business that may be available on the registry: the profile of the business and its officers (directors, auditors); annual accounts; a list of the business's divisions or places of business; the notice of registration or incorporation; the publication of the business's memoranda, articles of association, or other rules governing the operation or management of the business; existing names and history of the business; insolvency-related information; any share capital; certified copies of registry documents; and notifications of events (late filing of annual accounts, newly submitted documents, etc.). Other valuable information relating to the business registry may include the identification of relevant additional laws and regulations, or information on the expected turnaround time in the provision of registry information services and fees for such services.[94] In addition, some registries prepare reports relating to the operation of the business registry that may provide registry designers, policymakers and academic researchers with useful data (for example, on the volume of registrations and se. ches, operating costs, or registration and search fees collected over a given period). Information on business data, annual accounts and periodic returns, as well as information about fees for registry services, are usually the most popular pieces of information and the most requested by the public. When registration procedures permit, and subject to the law of the enacting State, business registries may also make available to users disaggregated statistical information that has voluntarily been subm. ed in respect of the gender, ethnicity, or language group of persons associated with the business. Such information can be of particular importance for States wishing to develop policies and programmes to support under-represented societal groups (see paras. 62 and 136 above).[95]

193. If the State is one in which member or shareholder details must be registered, the public may also be granted access to such information. A similar approach may be taken with respect to information on the beneficial ownership of a business, which may be made available to the public in order to allay concerns over the potential misuse of business entities. However, the sensitive nature of the information on beneficial ownership may require the State to exercise caution before opting for disclosure of beneficial ownership without any limitation.[96]

2. Removing unnecessary barriers to accessibility

194. The registry needs to ensure that searchable information is easily accessible; even though the information is available, it does not always mean that it is easy for

[94] The Secretariat has adjusted the text further to a decision of the Working Group at its twenty-ninth session that paragraph 192 (para. 189 of A/CN.9/WG.I/WP.106) should not duplicate information on business registration that might also be found in the commentary to recommendation 19 (recommendation 18 in A/CN.9/WG.I/WP.106) (para. 87, A/CN.9/928).

[95] The Secretariat has added two sentences ("When registration ... social groups") at the end of paragraph 192 (para. 189 of A/CN.9/WG.I/WP.106) in response to the comment of the Working Group at its twenty-ninth session that reference to gender-disaggregated data could be included in appropriate section of the draft guide (para. 33, A/CN.9/928).

[96] See, supra, note 69 for further information in respect of FATF Recommendation 24.

users to access. There are often different barriers to accessing the information, such as the format in which the information is presented: if special software is required to read the information, or if it is only available in one particular format, it cannot be said to be broadly accessible. In several States, some information is made available in paper and electronic formats; however, information made available only on paper likely entails reduced public accessibility. Other barriers that may make information less accessible are charging fees for it (see para. 205 below)[97], requiring users to register prior to providing access to the information, and charging a fee for user registration. States should find the most appropriate solutions according to their needs, their conditions and their laws.

195. Some States not only provide for electronic information searches but also distribute the information through other channels that can complement the use of the Internet or that may even represent the main method of distribution if an online registration system is not yet fully developed. The following additional means of sharing information are used in some States:

(a) Telephone services to provide information on registered businesses and product ordering;

(b) Subscription services to inform subscribers about events pertaining to specified businesses or for announcements of certain kinds of business registrations;

(c) Ordering services to enable access to various products, most often using an Internet browser; and

(d) Delivery services to convey various products, such as transcripts of publicly available registered information on a business, paper lists, or electronic files with selected data.[98]

196. One often overlooked barrier to accessing information, whether in order to register a business or to review data and information in the registry, is a lack of knowledge of the official language(s). Providing forms and instructions in other languages is likely to make the registry more accessible to users. However, business registries seldom offer such services in languages additional to the official language(s). Making all information available in additional languages may incur additional expense for the registry, a more modest approach may be to consider making information on only core aspects of registration, for example in respect of instructions or forms, available in a non-official language. In deciding which non-official language would be most appropriate, the registry may wish to base its decision on historical ties, the economic interests of the jurisdiction and the geographic area in which the jurisdiction is situated (see paras. 139 to 141 and rec. 22 above), as well as consider the use of a widely used language that facilitates cross-border communication.

3. Bulk information

197. In addition to making information on individual businesses available, business registries in some jurisdictions also offer the possibility of obtaining "bulk" information, i.e. a compilation of information on selected, or all, registered businesses. Such information can be requested for commercial or non-commercial purposes and is often used by public authorities as well as private organizations (such as banks) that deal with businesses and perform frequent data processing on them. Distribution of bulk information varies according to the needs and capability of the receiving entity. In performing this function, one approach would be for the registry to ensure the electronic transfer of selected data on all registered entities, combined with the transfer of data on all new registrations, amendments, and deregistration

[97] The Secretariat has entered a reference to paragraph 205 (para. 202 of A/CN.9/WG.I/WP.106) further to a request of the Working Group at its twenty-ninth session (para. 87, A/CN.9/928).

[98] For improved consistency of the guide, the Secretariat has (a) moved this paragraph (para. 191 of A/CN.9/WG.I/WP.106) to subsection 2, and (b) made editorial adjustments to its two opening sentences.

during a specified period. Another option for the registry would be to make use of web-based or similar services for system-to-system integration that provide both name searches and direct access to selected data on specific entities. Direct access avoids unnecessary and redundant storage of information by the receiving organization, and States where such services are not yet available should consider it as a viable option when streamlining their business registration system. Distribution of bulk information can represent a practical approach for the registry to derive self-generated funds (see para. 205 below).

Recommendation 38: Facilitating access to information

The law should ensure the facilitation of access to public information on registered businesses by avoiding the creation of unnecessary barriers such as: requirements for the installation of specific software; charging expensive access fees; or requiring users of information services to register or otherwise provide information on their identity.[99]

G. Cross-border access to publicly available registered information

198. The internationalization of businesses of all sizes creates an increasing demand for access to information on businesses operating outside their national borders. However, official information on registered businesses is not always readily available on a cross-border basis due to technical or language barriers. Making such cross-border access as simple and fast as possible is thus of key importance in order to ensure the traceability of businesses, the transparency of their operations and to create a more business-friendly environment.

199. A range of measures can be adopted to facilitate access by foreign users of the business registry. Certain measures can be implemented to ensure the easy retrieval of information stored in the business registry by such users. In addition to allowing for registration and search requests in at least one non-official language (see para. 196 above), adopting easy-to-use search criteria and a simply understood information structure would further simplify access by users from foreign jurisdictions. States may wish to consider coordinating with other States (at least with those from the same geographic region) in order to adopt approaches that would allow for cross-border standardization and comparability of the information transmitted. Another group of measures that could be adopted pertain to providing information in a non-official but widely understood language on how foreign users can access the services of the business registry. As in the case of domestic users, users from foreign jurisdictions should be advised of the possibility of establishing direct contact with registry personnel through a dedicated email account of the registry, electronic contact forms or client service telephone numbers (see para. 126 above).[100]

Recommendation 39: Cross-border access to publicly available registered information

The law should ensure that systems for the registration of businesses adopt solutions that facilitate cross-border access to the public information in the registry.

VII. Fees

200. It is standard practice in many States to require the payment of a fee for registration services. In return for that fee, registered businesses receive access to

[99] In keeping with comments of the Working Group at its twenty-ninth session, the Secretariat has adjusted recommendation 38 (recommendation 37 in A/CN.9/WG.I/WP.106) as follows: (a) the phrase "to business registration and" has been replaced with "public information on registered businesses that are", and (b) the word "prohibitively" has been deleted (para. 88, A/CN.9/928).

[100] The Secretariat has made adjustments to this paragraph to reflect drafting proposals made by the Working Group at its twenty-ninth session (para. 89, A/CN.9/928).

business registry services and to the many advantages that registration offers them. The most common types of fees are those payable for registration of a business and for the provision of information products and services, while to a lesser extent, fines may also generate funds. In some jurisdictions, registries may also charge an annual fee to keep a business in the registry (these fees are unrelated to any particular activity), as well as fees to register annual accounts or financial statements.

201. Although they generate revenue for the registries, fees can affect a business's decision whether to register, since such payments may impose a burden, in particular on MSMEs. Fees for new registration, for example, can prevent businesses from registering, while annual fees to keep a company in the registry or to register annual accounts could discourage businesses from maintaining their registered status. States should take these and other indirect effects into consideration when establishing fees for registration services. States seeking to increase the business registration of MSMEs and to support such businesses throughout their lifecycle should consider offering registration and post-registration services free of charge. In several States that consider business registration as a public service intended to encourage businesses of all sizes and legal forms to register rather than as a revenue-generating mechanism, registration fees are often set at a level that is not prohibitive for MSMEs.[101] In such States, the use of flat fee schedules for registration, regardless of the size of the business, is the most common approach. There are also examples of States that provide business registration free of charge. In States with enhanced interoperability among the business registry, taxation and social security authorities that results in the adoption of integrated registration and payment forms, a uniform approach should be taken to fees charged for registration by all relevant authorities.

A. Fees charged for business registry services

202. Striking a balance between the sustainability of the registry operations and the promotion of business registration is a key consideration when setting fees, regardless of the type of fee. One recommended approach followed in many States is to apply the principle of cost-recovery, according to which there should be no profit generated from fees in excess of costs. When applying such a principle, States should first assess the level of revenue needed from registry fees to achieve cost-recovery, taking into account not only the initial costs related to the establishment of the registry but also the costs necessary to fund its operation. These costs may include: (a) the salaries of registry staff; (b) upgrading and replacing hardware and software; (c) ongoing staff training; and (d) promotional activities and training for registry users. In the case of online registries, if the registry is developed in partnership with a private entity, it may be possible for the private entity to make the initial capital investment in the registry infrastructure and recoup its investment by taking a percentage of the service fees charged to registry users once the registry is operational.

203. Even when the cost-recovery approach is followed, there is considerable variation in its application by States, as it requires a determination of which costs should be included. In one State, fees for new registrations are calculated according to costs incurred by an average business for registration activities over the life cycle of the business. In this manner, potential amendments, apart from those requiring official announcements, are already covered by the fee that companies pay for new registration. That approach is said to result in several benefits, such as: (a) rendering most amendments free of charge, which encourages compliance among registered businesses; (b) saving resources related to fee payment for amendments for both the registry and the businesses; and (c) using the temporary surplus produced by advance payment for amendments to improve registry operations and functions. In other cases, States have decided to charge fees below the actual cost that the business registry

[101] In keeping with drafting suggestions made by the Working Group at its twenty-ninth session, the Secretariat has adjusted paragraph 201 (para. 91, A/CN.9/928).

incurs in order to promote business registration. In such cases, however, the services provided to businesses would likely be subsidized with public funds.

204. In setting fees in a mixed registry system, it may be reasonable for the State to charge higher fees to process applications and information requests submitted in paper form because they must be processed by registry staff, whereas electronic applications and information requests are directly submitted to the registry and are less likely to require attention from registry staff. Charging higher fees for paper-based registration applications and information requests will also encourage the user community to eventually transition to using the direct electronic registration and information request services. However, in making that decision, States may wish to consider whether charging such fees may have a disproportionate effect on MSMEs that may not have ready access to electronic services.

Recommendation 40: Fees charged for business registry services[102]

The law should establish fees, if any, for business registration and post-registration services at a level that is low enough to encourage business registration, in particular of MSMEs, and that, in any event, does not exceed a level that enables the business registry to cover the cost of providing those services.

B. Fees charged for information

205. In various States, fees charged for the provision of information services are a more viable option for registries to derive self-generated funding. Such fees also motivate registries to provide valuable information products to their users, to maintain the currency of their records and to offer more advanced information services. A recommended good practice for States aiming to improve this type of revenue generation would be to avoid charging fees for basic information services such as simple name or address searches, but to charge for more advanced information services that require greater processing by the business registry or that are more expensive to provide (e.g. direct downloading, subscription services or bulk information services; see also paras. 197 and 200 above). Since fees charged for information services are likely to influence users, such fees should be set at a level low enough to make the use of such services attractive. Again, the level of any such fee should be established according to the principle of cost-recovery, so as not to generate a profit in addition to covering the cost of the service. Moreover, when fees for information services are charged, States might consider establishing different fee regimes for different categories of user, such as private users, corporate or public entities, occasional users and users with an established user account. This approach would take account of the frequency with which or the purpose for which users request information services, their need for expedited or regular service, or the type of information products requested (e.g. on individual businesses or bulk information).[103]

Recommendation 41: Fees charged for information

The law should establish that:

(a) Information contained in the business registry should be available to the public free of charge; and

[102] The Secretariat has adjusted the text further to a proposal by the Working Group at its twenty-ninth session that terminology in the recommendation should be consistent with other parts of the legislative guide in referring to "business registry services" (para. 92, A/CN.9/928).

[103] Further to a decision of the Working Group at its twenty-ninth session, the Secretariat has clarified paragraph 205 (para. 94, A/CN.9/928).

(b) Information services that require greater processing by the business registry could be provided for a fee that reflects the cost of providing the information products requested.[104]

C. Publication of fee amounts and methods of payment

206. Regardless of the approach taken in determining applicable fees, States should clearly establish the amount of any registration and information fees charged to registry users, as well as the acceptable methods of payment. Such methods of payment should include allowing users to enter into an agreement with the business registry to establish a user account for the payment of fees. States in which businesses can register directly online should also consider developing an electronic platform that enables businesses to pay online when filing their application with the registry (see paras. 83 above and 207 below). When publicizing the amount of registration and information fees, one approach would be for the State to set out the fees in either a formal regulation or more informal administrative guidelines, which the registry can revise according to its needs. If administrative guidelines are used, this approach would provide greater flexibility to adjust the fees in response to subsequent events, such as the need to reduce the fees once the capital cost of establishing the registry has been recouped. The disadvantage of this approach, however, is that this greater flexibility could be abused by the registry to adjust the fees upwards unjustifiably. Alternatively, a State may choose not to specify the level of the fees payable, but rather to designate the authority that is authorized to establish the fees payable. The State may also wish to consider specifying in the law the types of service that the registry may or must provide free of charge.

Recommendation 42: Publication of fee amounts and methods of payment

The law should ensure that fees payable, if any,[105] for registration and information services are widely publicized, as are the acceptable methods of payment.

D. Electronic payments

207. States should consider developing an electronic platform that enable businesses to pay online (including the use of mobile payment systems and other modern forms of technology[106]) to access registry services for which a fee is charged (see para. 83 above). This will require enacting appropriate laws concerning electronic payments in order to enable the registry to accept online payments. Such laws should address issues such as who should be allowed to provide the service and under which conditions; access by users to online payment systems; the liability of the institution providing the service; customer liability and error resolution. Finally, such laws should also be consistent with the general policy of the State on financial services.

Recommendation 43: Electronic payments

The law should enable and facilitate electronic payments.

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[104] Further to a decision of the Working Group at its twenty-ninth session, the Secretariat has split recommendation 41 (recommendation 40 in A/CN.9/WG.I/WP.106) into two parts to first emphasize that information services should be free of charge and then to clarify that fees for information services, if any, should be established on a cost-recovery basis (para. 93, A/CN.9/928).

[105] At its twenty-ninth session, the Working Group agreed to insert the phrase "if any" after "fees payable" (para. 95, A/CN.9/928).

[106] As agreed by the Working Group at its twenty-ninth session, the Secretariat has deleted the opening phrase ("Once States have reached a certain level of technological maturity") and has added the phrase "and other modern forms of technology" after "mobile payments" in the first sentence of the paragraph (para. 97, A/CN9/928).

VIII. Liability and sanctions

208. While each business must ensure that its registered information is kept as accurate as possible by submitting amendments in a timely fashion, the State should have the ability to enforce proper compliance with initial and ongoing registration requirements. Compliance with those requirements is usually encouraged through the availability of enforcement mechanisms such as the imposition of sanctions on businesses that fail to provide timely and accurate information to the registry (see paras. 161 and 162 and rec. 29 above).

209. In addition, a system of notices and warnings could be set up in order to alert businesses of the consequences of failure to comply with specific requirements of business registration (for example, late filing of periodic returns). When the registry is operated electronically, automated warnings and notices could be periodically sent out to registered businesses. In addition, notices and warnings could be visibly displayed on the premises of the registration offices and routinely published electronically and in print media. To better assist businesses, in particular MSMEs, States could also consider designing training programs to raise the awareness of businesses regarding their liability to comply with registration requirements and to advise them on how to discharge that liability. [107]

A. Liability for misleading, false or deceptive information

210. States should adopt provisions that establish liability for any misleading, false or deceptive information that is submitted to the registry upon registration or amendment of the registered information of a business, and for failure to submit information required by the business registry when it ought to have been submitted. Care should be taken, however, to distinguish inadvertent failure to submit the required information from intentional submission of misleading, false or deceptive information, as well as from the intentional failure to submit information that could amount to submitting misleading, false or deceptive information. While wilful actions or omissions should be sanctioned with appropriate measures, inadvertent failure to submit the required information should result in less punitive measures, in particular if the inadvertent failure is rectified in a timely fashion.

211. In order to further clarify potential liability, States should also ensure that a notice on the business registry clearly specifies whether the information it contains has legal effect and is opposable to third parties in the form in which it is deposited in the registry (see also para. 58(f) above). [108]

Recommendation 44: Liability for misleading, false or deceptive information

The law should establish appropriate liability for any misleading, false or deceptive information that is provided to the business registry or for failure to provide the required information.

B. Sanctions

212. The establishment of fines for the breach of obligations related to business registration, such as late filing of periodic returns or failure to record changes in the registered information (see para. 163 above) are measures often adopted by States to

[107] The Secretariat has relocated this paragraph (para. 209 of A/CN.9/WG.I/WP.106) here further to a suggestion of the Working Group at its twenty-ninth session (para. 98, A/CN.9/928).

[108] At its twenty-ninth session, the Working Group agreed that the commentary to recommendation 44 (recommendation 43 in A/CN.9/WG.I/WP.106) should: (a) clarify the different consequences of inadvertent failure to submit the required information to the business registry and of intentional submission of false and misleading information as well as intentional failure to submit the required information; and (b) include the concept of opposability of information to third parties (paras. 99 and 100, A/CN.9/928).

enforce compliance. Fines can also represent a means of revenue generation, but their imposition again requires a balanced approach. Several States use fines as disincentives for businesses that are required to register to operate outside of the legally regulated economy. In some cases, legislative provisions link the company's enjoyment of certain benefits to the timely filing of required submissions; in others, a series of increasing fines for late filing is enforced that can ultimately result in compulsory liquidation. However, if fines are used as the main source of funding for the business registry, it can have a detrimental effect on the efficiency of the registry. Since registries in such States lose revenue generated by fines when compliance improves, there is little motivation for such registries to improve the level of compliance. States should, therefore, not rely upon fines as the main source of revenue of a business registry; instead, fines should be established and imposed at a level that encourages business registration without negatively affecting the funding of registries once compliance improves.

213. The recurrent use of fines to sanction the breach of initial and ongoing registration obligations might discourage businesses, in particular MSMEs, from registering or properly maintaining their registration. States should consider establishing a range of possible sanctions that would apply depending on the seriousness of the violation or, in the case of MSMEs failing to meet certain conditions established by the law, to forego any sanction for businesses defaulting for the first time.

Recommendation 45: Sanctions

The law should:

(a) Establish appropriate sanctions that may be imposed on a business for a breach of its obligations regarding information to be submitted to the registry in an accurate and timely fashion;[109]

(b) Include provisions pursuant to which a breach of obligation may be forgiven provided it is rectified within a specified time; and

(c) Require the registrar to ensure broad publication of those rules.

C. Liability of the business registry

214. The law[110] of the State should provide for the allocation of liability for loss or damage caused by error or through negligence in the administration or operation of the business registration and information system.

215. As noted above, users of the registry bear the liability for any errors or omissions in the information contained in an application for registration or a request for an amendment submitted to the registry, and bear the burden of making the necessary corrections. If applications for registration and amendment are directly submitted by users electronically without the intervention of registry staff, the potential liability of the enacting State would be limited to system malfunctions, since any other error would be attributable to users. However, if paper-based application forms or amendment requests are submitted, the State must address the extent of its potential liability for the refusal or failure of the registry to enter such information correctly. A similar approach should be taken in States with electronic business registration systems that require certain information submitted electronically to nonetheless be

[109] The Secretariat has redrafted recommendation 45(a) as requested by the Working Group at its twenty-ninth session (para. 102, A/CN.9/928).

[110] At its twenty-ninth session, the Working Group requested the Secretariat to clarify that in many States the question of business registry liability was dealt with by other laws of the State and not the law on business registration. The Secretariat, however, has left the commentary unaltered, since the term "law" as defined in paragraph 16 (para. 13 of A/CN.9/WG.I/WP.106) already includes the broader body of domestic law and was not limited to provisions on business registration (para. 103, A/CN.9/928).

entered by registry staff into the registry record and where such entry might also be subject to error (see also para. 189 above).[111]

216. Further, it should be made clear to registry staff and registry users that registry staff are not allowed to provide legal advice on requirements for effective registration and amendment, or on their legal effects, nor should staff make recommendations on which intermediary (if any) the business should choose to take charge its registration or amendment process. However, registry staff should be permitted to give practical guidance with respect to the registration and amendment processes. In States that opt for an approval system, this restriction on the provision of legal advice should, of course, not be applicable to the judges, notaries and lawyers acting as intermediaries or entrusted with the administration of registration procedures.

217. While it should be made clear that registry staff may not provide legal advice (subject to the type of registration system of the State), the State must also address whether and to what extent it should be liable if registry staff nonetheless provide incorrect or misleading information on the requirements for effective registration and amendment or on the legal effects of registration.

218. In addition, in order to minimize the potential for misconduct by registry staff, the registry should consider establishing certain practices such as instituting financial controls that strictly monitor staff access to cash payments of fees and to the financial information submitted by users who use other modes of payment. Such practices may include the institution of audit mechanisms that regularly assess the efficiency and the financial and administrative effectiveness of the registry.

219. If States accept liability for loss or damage caused by system malfunction or error or misconduct by registry staff, they may consider whether to allocate part of the registration and information fees collected by the registry to a compensation fund to cover possible claims, or whether the claims should be paid out of general revenue. States might also decide to set a maximum limit on the monetary compensation payable in respect of each claim.

Recommendation 46: Liability of the business registry

The law should establish whether and to what extent the State is liable for loss or damage caused by error or negligence of the business registry in the registration of businesses or the administration or operation of the registry.[112]

IX. Deregistration

A. Deregistration

220. Deregistration of a business means that a notation has been made in the registry that it is no longer registered, and that it has ceased to operate. In such instances, the public details in respect of the business usually remain visible on the register, but the status of the business has been changed to indicate that it has been removed or that the business is no longer registered. Deregistration occurs once the business, for whatever reason, has permanently ceased to operate, including as a result of a merger, or forced liquidation due to bankruptcy, or in cases where applicable law requires the registrar to deregister the business for failing to fulfil certain legal requirements.

221. States should consider the role of the registry in deregistering a business. In most jurisdictions, deregistration of a business is included as one of the core functions of the registry. It appears to be less common, however, to entrust the registry with the

[111] The Secretariat has added a new sentence at the end of paragraph 215 (para. 211 of A/CN.9/WG.I/WP.106) further to the decision of the Working Group at its twenty-ninth session that the paragraph should reflect the practice of States where registry staff must enter information submitted electronically into the registry (para. 103, A/CN.9/928).

[112] Further to a decision of the Working Group at its twenty-ninth session, the Secretariat has redrafted recommendation 46 as requested (para. 104, A/CN.9/928).

decision whether or not a business should be deregistered as a result of insolvency proceedings or winding-up. In States where this function is included, statutory provisions determine the conditions that result in deregistration and the procedures to follow in carrying it out.

222. Because deregistration pursuant to winding-up or insolvency proceedings of a business are matters regulated by laws other than those governing the registration of a business, and since such laws vary greatly from State to State, this legislative guide refers only to deregistration of those solvent businesses that the enacting State has deemed dormant or no longer in operation pursuant to the legal regime governing the business registry. In such cases, most States allow for deregistration to be carried out either upon the request of the business (often referred to as "voluntary deregistration") or at the initiative of the registry (frequently referred to as "striking-off"). In order to avoid difficulties for the registrar in determining when an exercise of the power to deregister is warranted because a business is a dormant solvent business or when it is no longer in operation, the law should clearly establish the conditions that must be fulfilled. This approach will also avoid a situation where that power may be exercised in an arbitrary fashion. Permitting a registrar to carry out deregistration pursuant to clear rules permits the maintenance of a current registry and avoids cluttering the record with businesses that do not carry on any activity. When deregistration is initiated by the registrar, there must be reasonable cause to believe that a registered business has not carried on business or that it has not been in operation for a certain period of time. Such a situation may arise, for example, when the State requires the business to submit periodic reports or annual accounts and a business has failed to comply within a certain period of time following the filing deadline. In any case, the ability of the registrar to deregister a business should be limited to ensuring compliance with clear and objective legal requirements for the continued registration of a business. In several States, before commencing deregistration procedures, the registrar must inform the business in writing of its pending deregistration and allow sufficient time for the business to reply and to oppose that decision. Only if the registrar receives a reply that the business is no longer active or if no reply is received within the time prescribed by law will the business be deregistered.

223. Deregistration may also be carried out upon the request of the business, which most often occurs if the business ceases to operate or has never operated. States should specify in which circumstances businesses can apply for deregistration and which persons associated with the business are authorized to request deregistration on behalf of the business. Voluntary deregistration is not an alternative to more formal proceedings, such as winding-up or insolvency, when those proceedings are prescribed by the law of the State in order to liquidate a business.

224. Deregistration should in principle be free of charge regardless of whether it is carried out at the initiative of the registrar or upon the request of the business. Further, States should consider adopting simplified procedures for the deregistration of MSMEs.

Recommendation 47: Voluntary deregistration

The law should:

(a) Specify the conditions under which a business can request deregistration;

(b) Require the registrar to deregister a business that fulfils those conditions; and

(c) Permit the State to adopt simplified procedures for deregistration of MSMEs.[111]

[111] The Secretariat has added subparagraph (c) to the recommendation and reference in the commentary to reflect the decision of the Working Group at its twenty-ninth session that States should be encouraged to adopt simplified procedures for the deregistration of MSMEs (para. 105, A/CN.9/928).

Recommendation 48: Involuntary deregistration

The law should specify the conditions pursuant to which a registrar can deregister a business.[114]

B. Process of deregistration and time of effectiveness of deregistration[115]

225. Regardless of whether deregistration is requested by the business or initiated by the registrar, where the business is registered as a separate entity, the registry must issue a public notice of the proposed deregistration and when that deregistration will become effective. Such an announcement is usually published on the website of the registry or in official publications such as the National Gazette or in both. This procedure ensures that businesses are not deregistered without providing interested third parties (e.g. creditors, members of the business) the opportunity to protect their rights (the usual practice is to submit a written complaint corroborated by any required evidence to the registry). After the period indicated in the announcement has passed, a notation is made in the registry that the business is deregistered. Prior to the deregistration becoming effective, the applicable law may require that a further notice be published. Pending completion of the deregistration procedure, the business remains in operation and will continue to carry on its activities.

226. The law should establish the time of effectiveness of the deregistration, and the status of the business in the registry should indicate the time and date of its effect, in addition to the reasons for the deregistration. The registrar should enter such information in the registry as soon as practicable so that users of the registry are apprised without undue delay of the changed status of the business.

227. Registries should retain historical information on businesses that have been deregistered, leaving it to the State to decide the appropriate length of time for which such information should be preserved (see paras. 229 to 232 and rec. 51 below). When the State has adopted a unique identifier system, the information related to the business should remain linked to that identifier even if the business is deregistered.

Recommendation 49: Process of deregistration and time and effectiveness of deregistration

The law should:

(a) Provide that a written notice of the deregistration is sent to the registered business;

(b) Establish that the deregistration is publicized in accordance with the legal requirements of the enacting State;

(c) Specify when the deregistration of a business is effective; and

(d) Specify the legal effects of deregistration.[116]

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[114] At its twenty-ninth session, the Working Group requested the Secretariat to eliminate the phrase "at its own initiative" from the recommendation and to change its title to "Involuntary deregistration" (para. 106, A/CN.9/928).

[115] The Secretariat has revised the commentary in this section in accordance with the views expressed by the Working Group at its twenty-ninth session (paras. 107 and 108, A/CN.9/928).

[116] As requested by the Working Group at its twenty-ninth session, the Secretariat has deleted subparagraph (b) of recommendation 49 (recommendation 49 in A/CN.9/WG.I/WP.106) and combined the remainder with what was formerly recommendation 48 in A/CN.9/WG.I/WP.106 (para. 107, A/CN.9/928).

C. Reinstatement of registration

228. In several States, it is possible to reinstate the registration of a business that has been deregistered at the initiative of the registrar or upon the request of the business, provided that the request to the registrar for reinstatement meets certain conditions (in some States, this latter procedure is called "administrative restoration") or is made by court order. In certain States, both procedures are available and choosing either of them usually depends on the reason for which the business was deregistered or the purpose of restoring the business. The two procedures usually differ in some key aspects, such as who can apply to have the business restored, which business entities are eligible for restoration and the time limit for filing an application for restoration. The requirements for "administrative restoration" in States that provide for both procedures are often stricter than those for restoration by court order. For example, in such States, only an aggrieved person, which may include a former director or member, can submit an application for reinstatement to the registrar, and the time limit within which the application can be submitted to the registry may be shorter than the time granted to apply for a court order. Regardless of the method(s) chosen by the State to permit reinstatement of the registration of a business, once the registration has been reinstated, the business is deemed to have continued its existence as if it had not been deregistered, which includes maintaining its former business name. In cases where the business name is no longer available (as having been assigned to another business registered in the interim), procedures are usually established by the State to govern the change of name of the reinstated business.

Recommendation 50: Reinstatement of registration

The law should specify the circumstances under which and the time limit within which the registrar is required to reinstate a business that has been deregistered.

X. Preservation of records

A. Preservation of records

229. As a general rule, the information in the business registry should be kept indefinitely. The enacting State should decide on the appropriate length of time for which such information should be kept and may choose to apply its general rules on the preservation of public documents.

230. However, the length of the preservation period for records is most often influenced by the way the registry operates, and whether the registry is electronic, paper-based or a mixed system. In the case of electronic registries, the preservation for extended periods of time of original documents submitted in hard copy might not be necessary, provided that the information contained in such documents has been recorded in the registry or that the paper documents have been digitized (through scanning or other electronic processing).

231. Those States with paper-based or mixed registration systems, for example, must decide the length of time for which the paper documents submitted to it should be kept by the registry, in particular in situations where the relevant business has been deregistered. Considerations relating to the availability of storage space and the expense of storing such documents would likely play a role in this decision.

232. Regardless of the way in which the business registry is operated, providing prospective future users with long-term access to information maintained in the registry is of key importance, not only for historical reasons, but also to provide evidence of past legal, financial and management issues relating to a business that might still be of relevance. The preservation of electronic records is likely to be easier and more cost-effective than preserving paper records. In order to minimize the cost and considerable storage space required for the preservation of documents in hard copy, paper-based registries that cannot convert the documents received by it into an

electronic form may adopt alternative solutions (for example, the use of microfilm) that allow for the transmission, storage, reading, and printing of the information.

Recommendation 51: Preservation of records

The law should provide that documents and information submitted by the registrant and the registered business, including information in respect of deregistered businesses, should be preserved by the registry so as to enable the information to be retrieved by the registry and other interested users.

B. Alteration or deletion of information

233. The law should establish that the registrar may not alter or remove registered information, except as specified by law and that any change to that information can be made only in accordance with the applicable law. However, to ensure the smooth functioning of the registry, in particular when registrants submit registration information using paper forms, the registrar[107] should be authorized to correct its own clerical errors (see paras. 33, 51 and 153 above) made in entering the information from the paper forms into the registry record. If this approach is adopted, notice of this or any other correction should promptly be sent to the business (and a notification of the nature of the correction and the date it was effected should be added to the public registry record linked to the relevant business). Alternatively, the State could require the registrar to notify the business of its error and permit the submission of an amendment free of charge.

234. Further, the potential for misconduct by registry staff should be minimized by: (a) designing the registry system to make it impossible for registry staff to alter the time and date of registration or any registered information entered by a registrant; and (b) designing the registry infrastructure so as to ensure that it can preserve the information and the documents concerning a deregistered business for as long as prescribed by the law of the enacting State.

Recommendation 52: Alteration or deletion of information

The law should provide that the registrar does not have the authority to alter or delete information contained in the business registry record except in those cases specified in the law.

C. Protection against loss of or damage to the business registry record

235. To protect the business registry from the risk of loss or physical damage or destruction, the State should maintain back-up copies of the registry record. Any rules governing the security of other public records in the enacting State might be applicable in this context.

236. The threats that can affect an electronic registry also include criminal activities that may be committed through the use of technology. Providing effective enforcement remedies would thus be an important part of a legislative framework aimed at supporting the use of electronic solutions for business registration. Typical issues that should be addressed by enacting States would include unauthorized access or interference with the electronic registry; unauthorized interception of or interference with data; misuse of devices; fraud and forgery.

[107] At its twenty-ninth session, the Working Group requested the Secretariat to replace the term "registry staff" with "registrar" in paragraph 233 (para. 228 of A/CN.9/WG.I/WP.106) and elsewhere in the text (para. 111, A/CN.9/928). The Secretariat has made appropriate adjustments to the text.

Recommendation 53: Protection against loss of or damage to the business registry record

The law should:

(a) Require the registrar to protect the registry records from the risk of loss or damage; and

(b) Establish and maintain back-up mechanisms to allow for any necessary reconstruction of the registry record.

D. Safeguard from accidental destruction

237. An aspect that may warrant consideration by States is that of natural hazards or other accidents that can affect the processing, collection, transfer and protection of the data housed in the electronic registry and under the liability of the registry office. Given user expectations that the business registry will function reliably, the registrar should ensure that any interruptions in operations are brief, infrequent and minimally disruptive to users and to States. For this reason, States should devise appropriate measures to facilitate protection of the registry. One such measure could be to develop a business continuity plan that sets out the necessary arrangements for managing disruptions in the operations of the registry and ensures that services to users can continue. In one State, for example, the registry has established a "risk register", i.e. a dynamic document that is updated as changes in the operation of the registry occur. Such a risk register allows the registrar to identify possible risks for the registration service as well as the appropriate mitigation measures. Designated staff are required to report on an annual basis the threats to the registry and the relevant actions taken to mitigate such threats.

Recommendation 54: Safeguard from accidental destruction

The law should provide that appropriate procedures should be established to mitigate risks from force majeure, natural hazards, or other accidents that can affect the processing, collection, transfer and protection of data housed in electronic or paper-based business registries.

Annex*

The underlying legislative framework

A. Changes to underlying laws and regulations

1. Business registration reform can entail amending either primary legislation or secondary legislation or both. Primary legislation concerns texts such as laws and codes that must be passed by the legislative bodies of a State. Reforms that consider this type of legislation thus require the involvement of the legislature and, for this reason, can be quite time-consuming. Secondary legislation is that body of texts composed of regulations, directives and other similar acts made by the executive branch within the boundaries laid down by the legislature. Reform of secondary legislation does not need to be reviewed by the legislature and thus it can be carried out in a shorter time frame. Therefore, when possible, the use of secondary legislation may be a more attractive option than the reform of primary legislation.

2. Business registration reform can entail amending different aspects of the domestic legislation of a State. In addition to legislation that is meant to prescribe the conduct of business registration, States may need to update or change laws that may simply affect the registration process in order to ensure that such laws respond to the needs of MSMEs and other businesses. There is no single solution in this process that will work for all States, since the reforms will be influenced by a State's legislative framework. However, the reforms should aim at developing domestic laws that support business registration with features such as: transparency and accountability, clarity of the law and the use of flexible legal entities.

3. Regardless of the approach chosen and the extent of the reform, changes in domestic laws should carefully consider the potential costs and benefits of this process, as well as the capacity and the will of the government and the human resources available. An important preparatory step of a reform programme involves a thorough inventory and analysis of the laws that are relevant to business registration with a view to evaluating the need for change, the possible solutions, and the prospects for effective reform. In some cases, this assessment could result in deferring any major legislative reform, particularly if significant gains to the process of simplification can be achieved by the introduction of operational tools. Once it has been decided what changes should be made and how, it is equally important to ensure their implementation. In order to avoid the possible risk of unimplemented reforms, the government, the reform steering committee and the project teams should carefully monitor the application of the new legal regime. The following paragraphs offer some examples of approaches that can be taken to streamline domestic laws and regulations with a view to simplifying business registration and to making it more accessible to MSMEs.

B. Clarity of the law

4. For States wishing to facilitate the establishment of businesses, in particular of MSMEs, it is important to review existing law to identify possible impediments to the simplification of the registration process. The nature of the reform would depend on the status of the domestic law, and a variety of examples based on States' experiences are available.

5. These reforms may include decisions by States to shift the focus of the law towards privately held businesses, and away from public limited companies,

* At its twenty-eighth session, the Working Group agreed with the substance of the sections reproduced in this Annex (Chapter XI, Sections A through E of A/CN.9/WG.I/WP.101) and recommendations 52 to 54 of A/CN.9/WG.I/WP.101, but decided to move them into an annex to the legislative guide (para. 142, A/CN.9/900).

particularly if the former currently account for the majority of the firms in the State. Reforms could also include the decision to move the legal provisions pertaining to small businesses to the beginning of any new law on business forms in order to make such provisions easier to find or to use simpler language in any updated legislation.

6. One reform that would greatly clarify the law would be a comprehensive review of all laws affecting business registration and a unification of the various rules into a single piece of legislation. This could also allow for some flexibility to be built into the system, with the adoption of certain provisions as regulations, or simply providing the legal basis to introduce regulations at a later stage.

Recommendation 1/Annex: Clarity of the law

The law should, to the extent possible, consolidate legal provisions pertaining to business registration in a single clear legislative text.

C. Flexible legal forms[1]

7. Entrepreneurs tend to choose the simplest legal form available for their business when they decide to register, and that States with rigid legal forms have an entry rate considerably lower than those with more flexible requirements. In States that have introduced simplified legal forms for business, the registration process for these business types is much simpler and less costly. Entrepreneurs are not required to publish the rules governing the operation or management of their business in the Official Gazette; instead, these can be posted online through the business registry. There are many States in which the involvement of a lawyer, notary or other intermediary is not obligatory for the preparation of documents or conducting a business name search.[2]

8. Legislative changes to abolish or reduce the minimum paid in capital requirement for businesses also tend to facilitate MSME registration, since micro and small businesses may have limited funds to meet a minimum capital requirement, or they may be unwilling or unable to commit their available capital in order to establish their business. Instead of relying on a minimum capital requirement to protect creditors and investors, some States have implemented alternative approaches such as the inclusion of provisions on solvency safeguards in their legislation; conducting solvency tests; or preparing audit reports that show that the amount a company has invested is enough to cover the establishment costs.

9. Introducing simplified forms of limited liability and other types of businesses is often coupled with a considerable reduction or complete abolition of the minimum capital requirements that other legal forms of business are required to meet upon formation. In several States that have adopted simplified business entities, the minimum capital requirement has been abolished completely, and in other cases, initial registration or incorporation has been allowed upon deposit of a nominal amount. In other States, progressive capitalization has been introduced, requiring the business to set aside a certain percentage of its annual profits until its reserves and the share capital jointly total a required amount. In other cases, progressive capitalization is required only if the simplified limited liability entity intends to graduate into a full-fledged limited liability company (for which a higher share capital would be required), but there is no obligation to do so.

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[1] The Working Group may wish to note parallel work that it is undertaken in respect of an UNCITRAL limited liability organization (A/CN.9/WG.I/WP.99 and A/CN.9/WG.I/WP.99/Add.1).

[2] At its twenty-ninth session, the Working Group agreed to the following changes in paragraph 7 (a) the phrase "and less costly" should be added at the end of the second sentence; (b) a full stop should be inserted instead of a semi-colon after the phrase "through the business registry" in the next to the last sentence; and (c) the term "and" should be deleted and the phrase "There are many States in which" inserted before the phrase "the involvement of a lawyer ..." in the final sentence (para. 114, A/CN.9/928).

10. Another reform that would be conducive to improved business registration is to provide freedom to entrepreneurs to conduct all lawful activities without requiring them to specify the scope of their venture.[3] This is particularly relevant in those jurisdictions where entrepreneurs are required to list in their articles of association the specific activity or activities in which they intend to engage so as to restrain firms from acting beyond the scope of their goals and, according to certain literature, to protect shareholders and creditors. Allowing for the inclusion in the articles of association (or other rules governing the operation or management of a business) of a so-called "general purpose clause" which states that the company's aim is to conduct any trade or business and grants it the power to do so, facilitates business registration. This approach is far less likely to require additional or amended registration in the future, as businesses may change their focus since entrepreneurs could change activities without amending their registration, provided that the new business activity is a lawful one and that the appropriate licences have been obtained. Additional options to the inclusion of a general purpose clause, which would support the same goal, could be passing legislation that makes unrestricted objectives the default rule in the jurisdiction, or abolishing any requirement for businesses, in particular those that are privately held, to state objectives for registration purposes.

Recommendation 2/Annex: Flexible legal forms

(a) The law should permit flexible and simplified legal forms for business in order to facilitate and encourage registration of businesses of all sizes, including those forms considered in the [UNCITRAL legislative guide on an UNCITRAL limited liability organization]; and

(b) States should consider providing for the optional use of intermediaries by MSMEs.[4]

D. Primary and secondary legislation to accommodate the evolution of technology

11. Since information technology is a field marked by rapid technological evolution, it would be advisable to establish guiding legal principles in the primary legislation, leaving secondary legislation to stipulate the specific provisions regulating the detailed functioning and the requirements of the system. Once the business registration process is fully automated, States should establish provisions (preferably in the secondary legislation) or policies that discipline government-to-government data exchange in order to avoid any lack of cooperation among different authorities.

Recommendation 3/Annex: Primary and secondary legislation to accommodate the evolution of technology

The law should establish guiding legal principles in relation to electronic registration in primary legislation, and should set out specific provisions on the detailed functioning and requirements of the electronic system in secondary legislation.

E. Electronic documents and electronic authentication methods

12. Entering information into an online registry is a business-to-government transaction that should be subject to the same treatment, under domestic legislation,

[3] This is a feature on which the Working Group has already agreed in its discussion of a legislative text on a simplified business entity (para. 70, A/CN.9/825). See also paras. 31 to 34, A/CN.9/WG.I/WP.99.

[4] At its twenty-ninth session, the Working Group agreed to add recommendation 2/Annex (b) (para. 113, A/CN.9/928).

as any other electronic transaction. Therefore, if an appropriate domestic legislative framework for electronic transactions is not in place, a preliminary step for a reform aimed at supporting electronic business registration would be to recognize and regulate the use of such electronic transactions. Among other things, States should adopt laws permitting electronic signatures and the submission of electronic documents.[5] In some States, for example, the use of an advanced electronic signature is mandatory when transmitting information to a business registry. When laws on electronic communication are enacted, they should establish, at minimum, principles of non-discrimination, technological neutrality and functional equivalence, allowing for equal treatment of electronic and paper-based information. The principle of non-discrimination ensures that a document would not be denied legal effect, validity or enforceability solely on the grounds that it is in electronic form. The principle of technological neutrality requires the adoption of provisions that are neutral with respect to the technology used. The principle of functional equivalence lays out criteria under which electronic communications and electronic signatures may be considered equivalent to paper-based communications and hand-written signatures.

13. Further, it would be advisable that the law includes provisions to mitigate the risks that the use of ICT can carry with it and that can affect the validity, and in certain jurisdictions the legal validity, of the information transmitted through the electronic means. The most common risks include: confirming the identity of the entrepreneur filing for registration (referred to as "authentication"); preventing conscious or unconscious alteration of information during transmission (referred to as "integrity"); ensuring that sending and receiving parties cannot deny having sent or received the transferred message (referred to as "non-repudiation") and preventing disclosure of information to unauthorized individuals or systems (referred to as "confidentiality"). In those States where the law does not require business registries to check the veracity of the information submitted during the registration process, these risks may be more problematic as it can be relatively easy to manipulate registration systems and filing processes.

14. Verifying the identity of the registrant and ensuring the integrity of the application and the supporting information are key elements to ensure trust in ICT-supported registration systems and their corresponding use. Consequently, States should carefully consider the requirements that electronic signatures and electronic documents should have in order to minimize any risk of corporate identity theft[6] and the transmission of invalid information.

15. Whether or not the adoption of legislation on electronic signatures is premature due to the technological infrastructure of the State, various other techniques can prevent corporate identity theft and ensure security. The experience of several States has laid the groundwork for practices that may be replicated in other regions. Simple methods include the use of user names and passwords; electronic certificates; biometric verification (for example, fingerprints); monitoring systems and email systems that notify registered users about changes or whenever documents are filed on their business record; and the implementation or increase of penalties for false or misleading information submitted to the commercial registries. In order to facilitate MSME registration, States may wish to opt for the adoption of such simple ways of ensuring the authentication of the identity of business entrepreneurs.

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[5] UNCITRAL has adopted several texts dealing with electronic commerce. Those texts and relevant information on them can be found on the UNCITRAL website at http://www.uncitral.org/uncitral/uncitral_texts/electronic_commerce.html (see also para. 89 above).

[6] Corporate identity theft can occur through the theft or misuse of key business identifiers and credentials, manipulation or falsification of business filings and records, and other related criminal activities. Despite the use of the term "corporate", corporations are not the only business entities that are victimized by this crime. Any type of business or organization of any size or legal structure, including sole proprietorships, partnerships and limited liability companies can be targets of business identity theft.

F. Dispatch and receipt of electronic messages

16. Another issue to consider when implementing a business registry through the use of ICT solutions is that electronic registries may make it difficult to ascertain the time and place of dispatch and receipt of information. This is an aspect that may be relevant due to the time sensitivity of certain submissions, such as establishing the exact time and place at which a business has been registered. For this reason, it is important to have clear rules that define the time of "dispatch" and "receipt" of electronic messages. If such rules are not clearly defined in a State's legislative framework, or if they are not defined with the specificity required for the purposes of time-sensitive registration applications, then ad hoc laws addressing the issues of dispatch and receipt may be required.